



FINAL REPORT

LEGAL, REGULATORY AND ADMINISTRATIVE INSTITUTIONS SUPPORTING THE CREDIT MARKET

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A NEW LAW: LAW 99/1999

Title VI of Law 99/1999 regarding the acceleration of the economic reform sets a uniform regime for security rights in movable property. The provisions of the Commercial Code on pledges and the provisions of the Civil Procedure Code on pawn publicity, and any other contrary provisions are expressly abrogated.

THE PURPOSES OF THE LAW

- **INCREASE ACCESS TO BUSINESS CREDIT**
- **CREATE JOBS**
- **PROMOTE ECONOMIC GROWTH**

The new regulation aims at encouraging economic development by enlarging access to business credit. Implicitly, investments revival would create new jobs.

Law 99/1999 and the collateral regime represent a new and powerful instrument for credit promotion. The main recipients are enterprises, but the state, the local administration and the population would equally benefit of the procedure streamline in obtaining loans secured with movable property.

A NECESSARY REFORM

Before the entry into force of Law 99/1999, there were three possibilities for banks granting credit:

- Mortgage
- Personal guarantee
- Pledge

These three legal instruments proved to be inefficient.

As for the mortgage, the issues are the following:

- There are few persons to have property on immovable assets of such value that they would be able to secure significant credits.
- A mortgage requires many formalities.
- These formalities are quite expensive.
- The execution of such guarantee implies high costs and delays.

As for the personal guarantee, the main issue is that it cannot be used for important credits and implies higher risks for the creditors.

The pledge could only be done through a corporal contract, meaning the creditor was protected only if the debtor did entrust the asset to the creditor. However, in practice, the credit would become worthless, as the debtor could not use the pledged equipment in the production process. Consequently, an unnamed instrument was created, especially in the productive sector, the pledge without dispossession to the creditor. However, this type of pledge did not offer enough guarantees to creditors.

Considering the above, and the increased necessity to obtain credits applying to a larger category of debtors, the only solution was under these circumstances to amend the pledge regulations. Law 99/1999 tries to transform the pledge institution to make it correspond to the needs of the market economy. The news brought by this law is the concept of „collateral”.

The use of this concept broadens the range of modalities for credit securing also to the owners of movable assets, as they are defined in Article 6 of Title VI of Law 99/1999. This leads to the creation of some flexible mechanisms to ensure a larger access to business credit. This major objective the law aims at, must be kept in mind in construing and applying it. As a consequence of achieving this first purpose of the law, we reach two other positive effects: creating jobs and promoting the economic growth.

STRATEGIES

In order to achieve the purposes of the law: enlarge access to business credit, create jobs, and promote the economic growth, we needed to choose new strategies to best respond to these necessities.

Obtaining a credit first presumes having a financial difficulty. The costs involved in contracting a credit are currently too high, due to the insecurity of the creditors. They are not certain to recover their money or, in case the payment is not done, to be able to efficiently use the guaranties they were offered.

In conclusion, to reach its purposes, the law has to operate on the risks the creditors undertake when they grant a credit.

TACTICS

To allow more safety for creditors, the law drafter uses the following techniques:

- Simplification of the rules in creating security interest in movable property;
- Settling in advance future disputes between creditors with concurrent rights;
- Efficient methods of forced execution for creditors.

The simplification of the rules that govern the transactions secured with movable property is very important for the creditor. Creditors know that following a simple and

cheap procedure they may obtain a new type of right as guarantee for the loan. To easily create this *in rem* right is not enough, but only a necessary condition to build an efficient system for secured loans.

For the creditor it is at least as important to know what will be the solution to a conflict that may appear in the future between several creditors of the same debtor. If the creditors would know what chances they have to win and what are their chances to lose, they would be able to accurately calculate the risk of the transaction to be done. Thus, the risk involved in a specific agreement will reflect on the cost of the loan, and not on the other loans that this creditor would grant. Till now, since it is impossible to calculate the risks each transaction involves, creditors had to cover the possible risks through the costs applied to all transactions and not only to those that were the most hazardous.

Another essential component of the newly created right is the opportunity of a rapid and safe execution. Thus, a creditor would have several possibilities to enforce its guarantee: the right to peacefully take possession of the collateral using the security agreement - an writ of execution set in compliance with all legal requirements, going to court to obtain an order for the possession over the collateral, and the judiciary sale.

THE BASIC CONCEPTS

CREDITOR and DEBTOR

Law 99/1999 does not set any requirements to the condition of debtor or creditor. Any natural and legal person may play any of the two parts. The definition of the two concepts is set in Article 4 of Law 99/1999. On this subject we have to make the following remark: if the law or the agreement do not provide otherwise, according to this title, the debtor also means the owner of the asset offered as collateral for performing an obligation, when the owner is not bound by the secured obligation.

THE SECURED OBLIGATION

The secured obligation may be any kind of obligation, to give, to do or not do, civil and commercial, present or future obligations. This conclusion results from the interpretation of Articles 1 and 10 of Title VI of Law 99/1999.

THE COLLATERAL

This concept is exposed in Articles 6, Title VI of Law 99/1999. Therefore, the category of collaterals includes both tangible and intangible assets. The exceptions in applying this law to the collaterals are provided by Article 8 and are the following:

- a) the assignment of the inheritance rights and of the intellectual and industrial property rights;
- b) the privileges, right to withhold assets, except for their priority towards a security interest, in accordance with the provisions of Chapter III and IV.

THE SECURITY RIGHT IN MOVABLE PROPERTY

The movable security is a new concept introduced by law 99/1999. A new *in rem* right is created in relation to the collateral, and will follow the asset in the hands of third persons.

THE SIMPLIFICATION OF RULES IN ORDER TO CREATE SECURITY RIGHTS IN MOVABLE PROPERTY

HOW DO WE CREATE A SECURITY RIGHT IN MOVABLE PROPERTY?

- **BY WRITTEN CONTRACT**
- **THE DEBTOR'S SIGNATURE**
- **THE DESCRIPTION OF THE COLLATERAL**

Law 99/1999 aims at creating unique and simplified formalities for validly establish movable property as collateral, allowing the parties to include various clauses in the contract.

Thus, in accordance with Article 14, in order to validly set a security right in movable property, the parties only need to make a written contract either under private signature or as authentic deed signed by the debtor, which has to include a general description of the collateral. The parties are free to also set other clauses, such as:

- Clause for extending the guarantee on the products (in accordance with Article 16);
- Advance payment clause;
- Clause on guaranteeing a future obligation;
- Clause for peacefully taking possession of the asset, and so on.

SETTLING IN ADVANCE POTENTIAL DISPUTES BETWEEN THE COMPETITIVE CREDITORS

WHAT CREDITORS MAY HAVE COMPETING RIGHTS ON A COLLATERAL?

- A movable property can become collateral for several creditors. When the debts are not paid on time occurs a conflict of interests between them on who would have the right to first execute the collateral.
- The debtor who offered a movable property he owns as collateral, may not be able to pay its debts towards the state, the taxes. Who will have priority on the collateral: the state or the creditor who accepted the collateral?
- A situation can occur in which the debtor may become bankrupt after offering a movable property it owns as collateral. Who has priority then on the collateral, the creditor or the liquidator?

- Another possibility would be that in which the debtor, after offering an asset he owns as collateral, acts in a manner that would imply the liability in tort of the debtor in repairing the caused damage. The harmed person can obtain a court order for forced execution on the movable property. Who will have priority on the collateral?

WHAT IS THE ROLE OF THE ELECTRONIC ARCHIVE?

The Electronic Archive solves all the conflicts of interest between various creditors. The law establishes a very simple modality for publicity and priority ranking: filing in the archive. Therefore, if a creditor would file a financing statement in the archive, its right would become opposable to all the subsequent persons to acquire rights on the collateral or on the entire property of that debtor. Thus, it has priority both towards the subsequent creditors, and towards the state. Such rule, clearly stated in Article 28 of the Law – may provide security to creditors to achieve their rights.

HOW DOES A CREDITOR USE THE ELECTRONIC ARCHIVE?

The Electronic Archive is a publicity and priority ranking system, with two important functions: warning and establishing the priority.

The Archive warns prospective creditors on the previously entered security contracts. The archive is a public database, and any person may search information on a specific debtor or asset. If there is a filing on a prior security, the creditor will perform further searches on the terms of the previous contract and consider whether it still wishes to grant the loan.

To have priority towards subsequent creditors, a person must first file an initial financing statement in the archive, in accordance with the legal provisions, immediately after entering the contract. It is possible to register an intention to file a financing statement before entering the contract, and it would set the date of priority. Within two months the initial financing statement must be filed otherwise the priority would be lost.

EFFICIENT FORCED EXECUTION METHODS FOR CREDITORS

- **THE RIGHT TO PEACEFULLY TAKE POSSESSION OF THE ASSET**
- **THE EXECUTORY TITLE**
- **COURT DECISION GRANTING POSSESSION**
- **JUDICIARY SALE**

According to Article 17 of the law, the security agreement is an writ of execution. The forced execution can take place according to the common procedure set in the Civil

Procedure Code or the special execution procedure, set in Chapter V of Title VI of Law 99/1999.

If the special procedure is chosen, the creditor has the right to peacefully take possession of the collateral – if the agreement contains the clause „IN CASE ON NON-PERFORMANCE, THE CREDITOR MAY USE ITS OWN MEANS TO TAKE POSSESSION OF THE COLLATERAL”.

If the debtor obstructs the action of taking the collateral, the creditor may take it of the asset with the help of the state enforcement bodies. In order to do so, the creditor would have to file an application to which he would enclose a certified copy of the registration with the archive, a copy of the security agreement and a description of the asset that is about to become a collateral. Within 48 hours, the enforcement body will take the asset and immediately supply it to the creditor. Minutes will be drafted in two copies. The special procedure does not allow any opposition for the debtor at the action of taking the collateral, but only for the sale of the asset.

If the common procedure is chosen, the provisions of the Civil Procedure Code on the execution of an writ of execution shall apply. The forced execution application will be filed with the court enforcement officer. The court enforcement officer will ask the court to approve the enforcement procedure, and will attach a copy of the creditor's application and of the writ of execution. The court may approve the forced execution through an order given *in camera* without the attendance of the parties. An order that rejects the application may be appealed by the creditor within 5 days from its passing or its communication, as the case may be. The court will check whether the legal conditions for forced execution on movable property are complied with: whether the assets are pursuable, whether the debt exists, is due and can be evaluated in money.

Thus, according to the provisions of Law 99/1999, the creditor has several modalities to recover the loan in case of default. Only in last resort there will be a court decision and a judiciary sale, which are expensive, insecure and long procedures. They were the only options for a creditor before Law 99/1999 became effective. These measures are meant to provide increased safety to creditors, who will lend more money at lower interest rates.

PRESENTATION OF THE ELECTRONIC ARCHIVE OF SECURITY INTERESTS IN MOVABLE PROPERTY

According to Art. 49 of Law 99/1999 Title VI, the Electronic Archive is a unique database, containing a recording system of ranking priorities on movable collaterals and publicity, structured according to persons and assets. As defined in Article 1 of the Regulation, the Archive *„is a database at the national level, which ensures filing and access to information about financing statements”*. Thus, in this database will be recorded and retrieved information on security interests following several criteria.

The legal conditions for movable collaterals are set in Title VI of Law 99/1999 regarding the legal status of movable corporal securities, by Ordinance 89/2000 on some measures for authorizing operators and filing in the Electronic Archive, and the Government Resolution 802/1999 adopting the Regulation for organization and operation of the Electronic Archive of Security Interests in Movable Property. The ministry of Justice also issued Instructions regarding the authorization criteria for archive operators and the procedure for collection and payment of the fees stated by Government Ordinance 89/2000.

The Body of Operators and the Electronic Archive of Security Interests in Movable Property shall be in the suborder of the Ministry of Justice (the Oversight Authority) and shall perform filing and retrieving services and administer the database. The filing applications may be sent to the Archive both on paper and electronic format. Also, any person may have free and direct access to the information in the Archive.

EXAMPLES FOR ELECTRONIC ARCHIVE IMPLEMENTATION

United States of America –Register of Movable Collaterals

In the United States of America movable collaterals are registered in accordance with Article 9 of the Uniform Commercial Code. Each state has its own archive and some of those extend to regional level. At present there is a large variety of archives. In time some legislative amendments were proposed to strengthen the regulation power of the authorities that coordinates the archive so that they would reach a uniform practice in that field. Some states also introduced new filing techniques. Texas for instance, introduced the Electronic Data Interchange System (EDI) to receive and process filings and perform searches. Technological advances have lowered costs and improved service. Perhaps most importantly, archive operators have formed an association. They meet regularly to discuss current issues and solve problems.

Canada – the Private Property Archive

Movable collaterals are registered in Canada in accordance with the Private Property Security Act, with the private property archive of each province. The Canadian legislation in this field was based on Article 9 of the Uniform Commercial Code. Canadian archives are among the most modern in the world and provide automatic and on-line filing, Internet search service and access for their clients.

Ukraine – the State Pledge Registry

The Ukrainian law on movable collaterals became effective on March 1, 1999. This law applies only to pledges and tax privileges. It means that the financial leasing, conditional sales, consignment agreements and debt assignment are not covered.

Under these terms, even though the Ukrainian state pledge registry is one of the most modern in this part of the world, the law on which it is based has a few weak points and could be improved. The National Center for Information within the Ukrainian Ministry of Justice introduced a very modern on-line system using the on-line systems of both the Ministry of Justice and the National Bank of Ukraine. Clients may search information through any of these systems on the whole territory of the country. From March 1 to April 30, 2000, 61,895 filings were processed (commercial guarantees, previous guarantees and privileges on taxes), 1,536 amendments, 7,283 erasures and 5,121 certificates resulted from searches. On December 31, 1999 there were 320 access points to the register throughout Ukraine, including 259 bank institutions and 35 notary offices.

Albania – the registry of collaterals

Albanian secured transactions law and the registry regulation shall become effective this year. The registry of collaterals will be administered by the Ministry of Finance and will provide filing and search services. Initially, the financing statements will be sent to the registry on paper, and the data entered by operators in the central computerized system. Search applications will also be processed by operators for clients. There are plans for the future for on-line filing and direct search from the client's office.

WHAT ARE THE ARCHIVE PURPOSES?

A. Warning Function

First of all, the archive shall make available a search system to provide accurate and updated information on the filings. The most efficient search method is the search according to the debtor's name, because the results would include all the property the latter offered as collateral and which stand up to that moment. The other search types would not offer such complete information (as if one searched a specific car, which is not found, but there was an interest secured with all the belongings of the debtor).

According to the search results and the name of the debtor, there are two situations:

- **If there is no registration found**, the conclusion is that it may register the guarantee to be sure to get the rights the law grants to the first to file a financing statement for a movable property.
- **If it found other guarantees filed previously**, the conclusion is that it should perform further research. Consequently, the prospective creditor may request information from its future debtor on the amount of the previous credit, may require to secure the interest either with a different asset or accept that asset as collateral, even though there are creditors with a superior ranking.

Filing in the archive does not give substantial rights, but only procedural rights, and their significance comes up when a dispute occurs between creditors that have interests secured in the same collateral. The persons interested to search the archive for this information are: banks and other financial institutions (before granting credits), sellers and even buyers, sometimes.

B. Priority Ranking Function

The archive will make available a method through which creditors shall be able to register the movable property of the debtors as collaterals securing their transactions. Filing in the archive is a method to determine the priority if there are several creditors interested in the same collateral. Filing in the archive can be done by creditors (banks, credit cooperatives, leasing companies, financial institutions, investment funds, sellers, dealers for various equipment) and also by their representatives (lawyers, notaries, authorized private agents and governmental agents).

Article 28 of Law 99/1999 sets the rule according to which creditors satisfy their claims in a specific order: *“A corporal security and other corporal charge on assets that are subject to the present Title have priority in front of third parties, including the State; this priority is established when the corporal security or corporal charges have been made public by one of the methods provided by this article”*. This rule should be construed to allow the creditor who filed first to have priority against the others, when it comes to enforce the guarantee. Also, when there is a creditor who filed in the archive and one who did not, the one who filed will be preferred. The law sets some exceptions to that rule: situations in which a creditor who subsequently filed in the archive shall have a superior claim to one who filed before it.

C. No Other Function of the Archive Can Be Justified

Therefore, the operators' intention to check the deeds that established the guarantee, authorized from an economic and legal point of view, cannot be justified. This would only cause delays, higher costs and uncertainty. This conclusion is based on the fact that filing a financing statement based on a void agreement would not make the guarantee

valid (Art.29 (2) “filing in the archive does not make valid a guarantee that is null and void”.)

American archive operators conducted numerous experiences with different procedures and rules. Most of them proved to be inefficient, causing delays, expenses and uncertainty to creditors. Many mistakes required legislatures to adopt regulations that strictly govern the behavior of archive operators. The most frequent problems in America arise when archive officials did create forms asking for unnecessary information not required by the law, when they refused action until unnecessary information was supplied, or when they failed collecting information that the law requires and that creditors needed. They caused delay by reviewing documents for authenticity or correctness. They also imposed excessive fees to raise revenue beyond the actual needs of the archive and implemented complicated fee structures with no basis in the law and that discouraged credit. American archives have improved in recent years. The anti-commercial practices described above have largely been eliminated. Legislative changes have helped archive operators understand their proper role.

WHO PERFORMS THE FILING?

According to Article 2 of Law 99/1999, and to Article 2 of the Regulation, only authorized operators and their authorized agents, natural and legal persons, have the right to process filings in the Archive. Article 6 of Ordinance 89 undertook these provisions.

Art. 2. - (1) Only authorized operators and their authorized agents, natural and legal persons, have the right to enter filings in the Archive.

(2) Authorized operators shall form the Body of Operators, a legal entity of public utility, with no lucrative object, which sets its leading board and operates in accordance with this regulation and its own articles of incorporation.

(3) The Body of Operators shall administer and ensure the operation of the Archive in accordance with the provisions of Title VI of Law 99/1999, this regulation, the decisions of the Oversight authority and the internal organization and operation regulation of the Body of Operators.

Any person interested in getting an operator authorization shall submit an authorization application to the Ministry of Justice. The authorization is granted through an Order of the Minister of Justice for a three year period and can be periodically renewed. Instructions 2325 of October 4, 2000 detailed the authorization criteria for Archive operators. Therefore, in order to get the points needed to be authorized as Archive operator, natural and legal persons have to fulfill the requirements set in Article 15 paragraph (3) of Ordinance 89/2000. Each applicant can get maximum 100 points, and the authorization is granted to those obtaining minimum 60 points.

Operators may authorize agents to act on their behalf and directly file financing statements in the Archive. According to Article 16 paragraph 2 of Ordinance 89, the operator is jointly liable for any damage caused by its agent when performing the duties granted to it. The operator has to communicate to the Oversight Authority within 24 hours from its appointment the identification data for an agent.

WHAT IS FILED IN THE ARCHIVE?

The statements that can be entered in the Archive may be classified in the following categories:

- Financing statement
- Additional financing statement
- Amending statement
- Additional amending statement

The forms for these statements are presented in the annexes of the Resolution 802/1999, which contains the application regulation for Law 99/1999. When registered, each statement shall receive a number which is a serial number followed by the figures of the year when the filing is done. The statement also shows the filing date, hour, minute and second, identification data for the operator that processes the filing, and identification data for the authorized agent.

The initial financing statement form can be used to file an intention to make a financing statement and to process the financing statement. This form shall contain the following information:

- identification data for the debtor / debtors (first and last name, address, personal number – for individuals, and name, registered office, type of a legal entity, registration place and fiscal code – for legal persons).
- identification data for the creditor (first and last name, address, personal number – for individuals, and name, registered office, type of a legal entity, registration place and fiscal code – for legal persons).
- a description of the collateral.

The financing statement shall not contain information on the value of the collateral, the amount of credit, terms and conditions of the contract or the notary's signature. No state approval is required for filing in the Archive. Operators have the duty to process filings and cannot refuse a filing operation based on the fact they require further documents than those mentioned by the law.

The additional financing statement form can be used to register the intention to make a financing statement and to process the financing statement, if some information did not have enough space in the previous form.

The amending financing statement can only be used to void, terminate, prolong or modify a previously registered financing statement or in case of an assignment of the interest in the collateral. It should contain the following information:

- registration number of the initial financing statement
- what is the process the initial statement would go through
- what are the fields to be amended in the initial financing statement according to each process

The additional amending financing statement can be used to void, terminate, prolong or modify a previously registered financing statement or an assignment of the interest in the collateral, if the information did not have enough space in the amending financing statement.

HOW IS A REGISTRATION PROCESSED AND VERIFIED?

A financing statement must be completed in the Romanian language and must be submitted in the format prescribed in the Regulation. The statement can be submitted either on paper form or electronically to the Archive for registration. Electronic methods for submission may include a submission by fax, e-mail, Internet, dial-up method, direct on-line access or electronic data interchange (EDI) transmission.

Upon submission of a financing statement or amending financing statement and payment of the fee (see Article 39 of the Regulation) to the Body of Operators or authorized agents, the operator must check if the applicant is an interested person. (see Article 36(3) of the Regulation)

The information provided on the financing statement will be filled by exactly copying the contents of the form given into the Electronic Archive of Security Interests in Movable Property (Article 29(1) of the Regulation). The filing of a financing statement may be rejected if the statement is incomplete, illegible or the electronic data presented is unreadable by the Archive's system. In event of a rejection, the applicant will be informed of the decision and the reasons that grounded it within 5 business days.

After processing the filing, the Archive shall grant a unique registration number followed by the figures of the year when the filing is done. The filing date, hour, minute and second will be assigned to the registration when the Archive database system assesses the transmission and determines that all the required elements for the transmission were received in the appropriate format and they are accessible and readable (Article 43(2) of the Regulation). The registration number sets the priority ranking of the rights on the collateral (Article 9(2) of the Regulation).

Article 44 of the Regulation states that „Within 24 hours from the filing, each interested person who applied for it must send to each debtor and/or to the creditor, as the case may be, a copy of the financing statement form filed in the Archive.”

WHAT CAN BE SEARCHED AND HOW?

Any person has free and direct access to the Archive to search, read and copy the information (Article 45 of the Regulation)

A search can only be performed according to one of the following criteria:

- name of debtor
- year and serial number of the vehicle's engine
- identification elements of the immovable collateral (immovable by destination)
- registration number assigned to a specific filing

WHAT INFORMATION SHOULD CONTAIN THE SEARCH RESULTS?

- **Name of the Debtor** (Natural or Legal Person) Search A debtor name search result should reveal all active registrations and amendments where the name being searched is recorded as the name of a debtor on a registration or amendment and regardless of the type of collateral recorded. Expired or discharged registrations should not be shown on the results. All of the data entered on the financing statements and amending financing statements pertaining where the debtor is recorded should be given plus the registration number and date and time details assigned to each.
- **Serial number of serial number goods search.** The search results should reveal all active registrations and amendments where the goods were described by serial number on the registration or amendment notice in the serial number goods field regardless of who the debtor is. The results will not show serial number goods which may be included in inventory and described as inventory in the general collateral section of a registration or amendment notice, or serial number goods which have been discharged or are recorded on expired registrations. All of the details recorded on the active registrations should be given.
- **Registration number search** This search criteria could be successfully used by a debtor when the obligation is terminated, in order to check whether the creditor fulfilled its legal duty of filing an amending financing statement. The search results should reveal all the details recorded on the particular registration notice and any subsequent amendments.

WHAT SHOULD A BANK OR OTHER CREDITOR DO UNDER THE LEGAL STATUS OF MOVABLE CORPORAL SECURITIES?

The creditor should search in the Electronic Archive of Security Interests in Movable Property prior to lending to determine the credit worthiness of the prospective debtor and see whether the movable property to be charged has previously been encumbered. The

next requirement is for it to register its intention to file a financing statement with the Archive, as soon as possible to obtain priority, and then enter the security contract and file the initial financing statement within two months of filing the intention to maintain the earlier priority date.

The initial financing statement form must be completed with details of the security contract, in accordance with the instructions and the regulation. The debtor's name and serial number of secured collaterals must be accurate.

Upon receiving the confirmation of the registration with the Archive, the creditor must check whether the details of the security agreement were accurately stored. If an error occurred in filing the financing statement form, an amending financing statement form should be filed as soon as possible to correct it. If the operator wrongly stored the data in the financing statement in the Archive, the creditor should immediately notify the Archive in order to correct the error.

Filings must be constantly updated, amending the stored data when necessary. Any assignment of interest in the collateral to a new creditor and any transfer of collateral to a new debtor should be registered.

The filing should be renewed if the contract duration exceeds 5 years, before the expiry of the term, if not priority ranking could be lost.

A termination statement should be filed if the guaranteed obligation was executed. Article 61 of the Law states that a termination statement should be filed within 40 days from the execution of the secured obligation. The non-compliance with this provision ensues liability for any damage caused to the debtor.

REMINDER:

Within the status of movable corporal securities introduced by Law 99/1999, filing only implies a notice on the existence of a security contract. The contract details, such as the duration, the amount of the secured obligation, and so on should be obtained from the creditor registered in the initial financing statement.

The financing statement must be accurately completed and must reflect the exact contents of the security agreement.

Art. 59. - (2) In case there are inconsistencies between the data in the financing statement form and the data in the security agreement, in the relationships between third parties and between parties and third parties the information in the financing statement form shall prevail.

Filing does not convert a collateral issued from a void agreement in a valid collateral. Art. 29 (2) of the Law states that: *"filing in the archive does not confer validity to a null and void collateral"*.

TRANSITORY PROVISIONS

Both the Law and the Regulation provide a 120 days term after the Archive starts to operate for the registration of prior security interests, including pawns and mortgages, if they concern goods covered by Title VI. These would keep their priority ranking according to the moment when they were offered as collaterals.

Art. 102. – (1) The pawn or mortgage on assets that are subject to the present Title, created and registered before the present Title came into effect, remain subject to the legal provisions existing at the date of their creation.

(2) The courts will send the Archive the registers, documents and databases regarding the registrations made according to paragraph (1), within maximum 120 days after they start operating.

(3) Within 120 days after the Archive is established, the creditors who have established corporal securities according to the law in effect at that moment, will file a financing statement in the Archive, along with a registration certificate including the date and hour for the priority ranking of the registration.

(4) The corporal securities and charges created under the law in effect at the time of their creation shall be effective in what concerns the order of preference, the right to follow the asset offered as security held by third parties, opposability towards third parties, court enforcement, as well as the exercise of other rights.

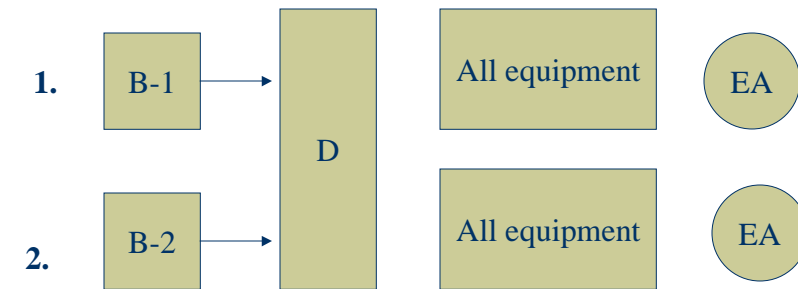
Art. 94 – (1) Within 120 days from the date of first operation of the Archive, the pledge registries from courts of justice will be transferred to the places and under the conditions set by the Oversight Authority, to be used at the Archive. The Archive shall ensure full and free public access to this information.

(2) In accordance with Art. 102 paragraph (3) of Title VI of Law 99/1999, the creditors who had secured interests in movable property in accordance with the law in force on the establishing date, will file a financing statement in the Archive, with a notarized copy of the pledge contract and a registration certificate, which will contain the date and hour of the registration priority with that Archive. This date will also be mentioned in the financing statement, according to the instructions in the forms. Operators must keep copies of the documents mentioned above till the secured interest terminates.

HOW COULD WE HAVE A SUCCESSFUL ARCHIVE?

The systems, the experience and legislation of other countries, the conferences for cooperation with similar institutions, the administrative legislation and practice, such as the Private Property Security Act, the Uniform Commercial Code, questioning clients, archive staff involvement and training, simplification of the forms, adequate financial controls to monitor the collection of fees for services provided, appropriate protection and safety measures for the system, attending a forum on the subject of analyze issues, performing tests and improvements, all of them may play an important part in the efficient operation of the Archive.

First in Time, First in Right



**Who Wins in dispute over equipment?
Why?**

Art. 28

According to Law 99/1999, filing in the Electronic Archive determines the priority ranking. Of two creditors registered with the Archive, the first to have access to the collateral is the one that filed first. The law provides a simple rule that clearly settles various conflicts that may appear between creditors.

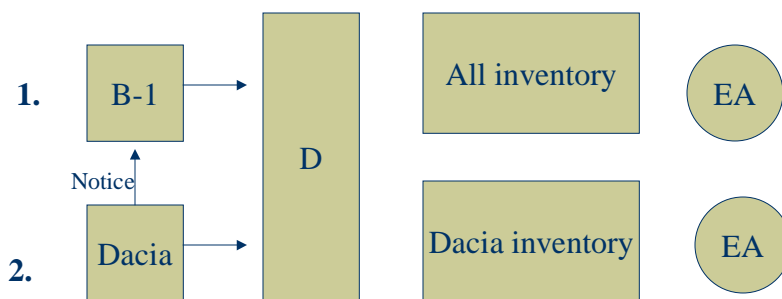
This solution is determined by the necessity to promote credit. If creditors feel they are secured against possible disputes, they would lend more money at lower interest rates.

The above scheme shows a simple example, highlighting the priority rule set in Article 28 of the Law.

Bank 1 grants credit to a fabric that we shall call Debtor, and asks for all the fabric's equipment as collateral. The collateral is then registered with the Electronic Archive. After a while, Bank 2 grants another credit to the fabric, also guaranteed with all the equipment. Bank 2 also registers with the Electronic Archive.

According to the rule set in Article 28 of the Law, Bank 1 shall prevail in a dispute with Bank 2, since it has a prior date of priority. This does not harm Bank 2 rights, since it was able to check the Electronic Archive and find out about the first credit.

2nd in Time, 1st in Right / Inventory



**Who Wins in dispute over Dacia inventory?
Why?**

There are some situations in which it would be better in order to promote commerce for the second creditor registered with the archive to win.

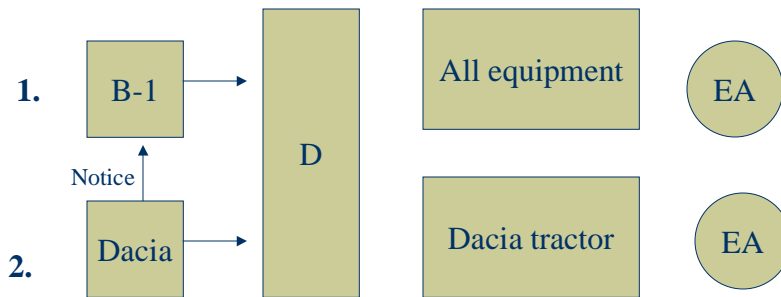
Let's take the following situation, given in the above example: a bank grants a credit to a tractor dealer and takes all the current and future inventory the latter has as collateral. By inventory we mean the assets that are to be sold. After some time, the dealer wishes to extend its business and also sell tractors made by Dacia. This would be possible if Dacia would sell tractors on credit. Then Dacia who wishes to sell as many tractors as possible agrees to this sale, provided the transaction would be secured by offering the Dacia tractors as collateral.

In this particular situation it would be better from the economic point of view, to follow Dacia interest, since if we did not, Dacia would no longer be able to give credit, knowing that if it sold its own goods it would have the second position in priority ranking.

For this situation the law provides the following solution: Dacia, even if it did not file first in the Archive, shall have priority towards the bank for the Dacia tractors. In order to be so, Dacia should file in the Archive and notify the bank before the dealer gets the tractors. This rule is set in Article 33 paragraph 1 letter a and is an exception from the priority rule set by Article 28 of the Law.

Thus, the law takes into account both the necessity to promote commerce and the individual interests: Dacia shall have priority and be able to safely sell its own products on credit, meanwhile the bank is notified and having that information, it may decide whether or not to grant credit under the same terms.

2nd in Time, 1st in Right / Equipment



**Who Wins in dispute over Dacia tractor?
Why?**

Let's say that in the previous situation the debtor is no longer a tractor dealer, but a farmer. The bank gives a credit to the farmer, and the latter secures it with all of its current and future equipment. After a while, the farmer wishes to buy another tractor to increase the productivity. The farmer would buy it from Dacia on credit. The tractor would be the movable asset offered as collateral for this credit.

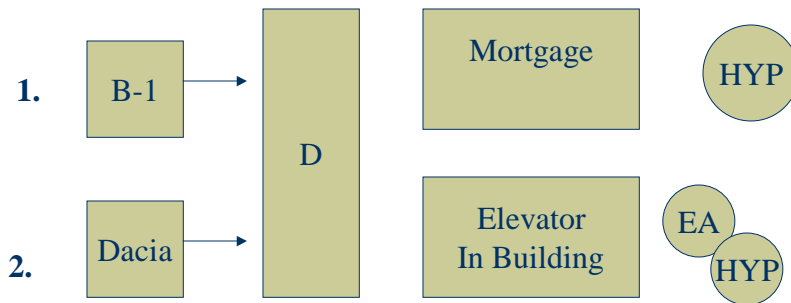
In this situation, we will again apply the rule set in Article 33 paragraph 1 letter a of the Law. Dacia, even if second registered, will have a superior claim and prevail if it first to file in the archive, before the debtor takes possession of the asset, and notifies the bank. The law makes no distinction between these two situations, or between the concepts of Inventory and Equipment.

However, from the economic point of view, such distinction would be quite useful.

If Dacia sells on credit to a farmer, the law states that Dacia should check in the Archive, notify the bank, if there is one, and register its own collateral with the archive. In case there is a dispute, the bank shall defend itself by denying the applicability of Article 33 (it would deny receiving the notification). Dacia need then to store the evidence of the notification for each tractor sold.

On the other hand, in this case, the notification would be in fact useless to the bank, since the credit has already been granted. It is not, as in the above example, a permanent credit, in relation with the commerce needs, thus being fluctuant, but an already granted credit, on which one can no longer intervene. In this situation, the rule is too expensive for Dacia.

2nd in Time, 1st in Right / Fixtures



**Who Wins in dispute over elevator?
Why?**

Another situation in which the second in time is first in right is for immovable assets by destination. However, it is not an exception to the rule set by Article 28, but a special rule, provided by Article 35 of the law for the situation in which a dispute occurs between a creditor that has a right on a collateral and a mortgagee.

Let's say the bank grants credit to a hotel, and the hotel guarantees it with a mortgage on the building. In accordance with Article 1777 of the Civil Code, the mortgage also extends on all subsequent improvements. The mortgage is then registered with the Land Book. Later on, the hotel needs a new elevator, which it buys on credit from Dacia that is an elevator manufacturer in this case. The credit is guaranteed with the installed elevator, and a financing statement is filed in the electronic archive.

If we would first serve the mortgagee, subsequent creditors would have to give lower and more expensive credits, and also ask for more important collaterals. This would be contrary to the spirit of the law, which is to promote credit. Consequently, the more appropriate solution the law has also adopted was to serve the creditor that filed first in the archive, which is Dacia.

However, paragraph 2 of Article 35 states that in case a mortgagee files in the Archive for all current and future improvements, it would have a superior claim on them. It means that had the bank registered not only with the Land Book but also with the Electronic Archive, it would have had priority access even to the immovable assets by destination, added to the building.

Buyers of Collateral



EA = Security interest in Debtor's Tractor

1. Upon Debtor's default, what are creditor's rights against buyer?
2. Why?

An interesting issue is that of the collateral circulation. One of the new aspects brought by Law 99/1999 is the possibility for the debtor to deal with the collateral as it wishes. Thus the creditor may choose between following the collateral in the hands of a third party, follow its products or both the collateral and its products. But what happens to the third person that bought it?

Article 38 of the law makes a difference according to the value of the asset: if the asset has been bought for more than 1,000 Euros, the creditor may follow the asset in the hands of the third person that bought it, which would not be able to defend its right. If the asset was purchased for less than 1,000 Euros in a public sale, the buyer acquires the asset free from any encumbrance. If the sale was not public, the creditor could also follow the asset in the hands of the third party that bought it.

A public sale is a sale performed by a person that has this kind of operations as object of activity (such as a dealer). It is quite normal for dealers to sell goods free of encumbrances, since they are interested in selling as much as possible. The fact that a buyer could be deprived of the good it has paid for may discourage commerce. Hundreds of sales like that take place every day in stores.

However, a farmer does not buy every day a tractor, which means that checking the Archive before buying it is a minimum effort. If it finds no registration, it is certain to get the tractor free of encumbrances. If it finds a financing statement registered, then the farmer shall think twice on the risk of losing the tractor.

Buyers of Collateral from Dealer



EA = Security interest in Debtor's Tractor

1. Upon Debtor's default, what are creditor's rights against buyer?
2. Why?

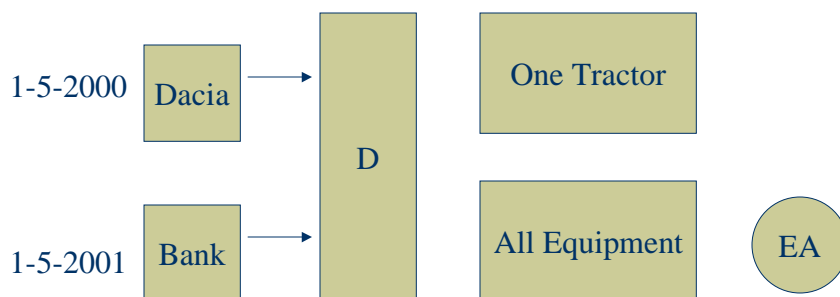
As we mentioned in the previous example, dealers have a different situation from the economic point of view. They buy large stocks of products on credit in order to resale them. Quite often, to sell more products, they have to sell them on credit in their turn. The dealers' creditors are also interested in the latter selling as many goods as possible, extend their business and pay back the money they owe. The whole economy benefits from the extension of private businesses.

When we accept for the guarantee to follow the collateral sold by a dealer in the hands of the buyer, even when the latter paid the full price, we only lay barriers to commerce and prevent the economic growth. Each buyer should check the Electronic Archive and if there are filings it should hesitate before buying goods for more than 1,000 Euros.

Thus, even though the legal provisions involve a progress, there is a danger that sales in stores might be blocked for goods of value exceeding 1,000 Euros. A solution for settling this issue would be to adopt as unique criterion the character of the sale. Goods sold through stores should be free of any encumbrance.

This solution may appear risky for creditors, which would be able to follow only the products of the collateral. In fact, the contract may set a multitude of guarantees, such as: the obligation to constantly have a stock of X products to cover the credit, the obligation to buy a new product with the money resulted from its sale, and so on. The principle of freedom of commerce allow the parties to invent any kind of protection mechanisms, simple or complicated, which would not disturb commerce, but provide the necessary safety to creditors.

Transition Rules: example 1

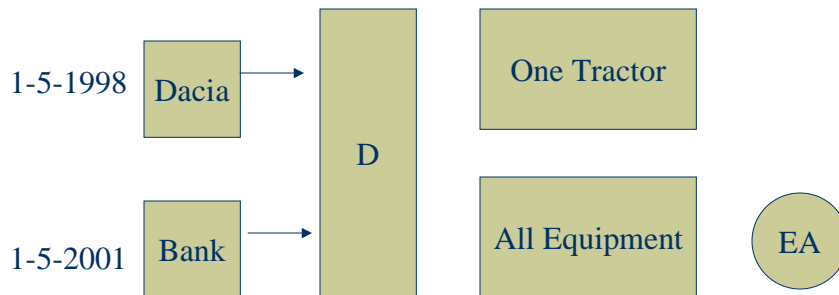


**Who Wins in dispute over tractor?
Why?**

In the terms of Law 99/1999, there are the same rules on advertising, priority and enforcement, regardless whether there is a financial leasing or conditional sale agreement. The leasing institution has to file in the Archive to acquire priority as to the other creditors. The actual intention of the parties is the one that matters, and this is why it is ineffective to withhold the ownership deed, which is an artifice for guarantee, without registering with the Electronic Archive. It is not a breach of property, but the protection of prospective creditors. The leasing institution that does not file in the Electronic Archive misleads other creditors, for which the debtor appears to be the owner.

In the example above, the leasing company does not file in the Electronic Archive, even though it had the legal obligation to do so in order to get priority towards other creditors. The bank intends to give a credit guaranteed with all the present and future equipment, and checks the Archive without finding anything. It then files its financing statement and considers itself to be first. When the debtor does not pay and the bank wishes to enforce the guarantee, including the equipment bought in leasing, the leasing company objects and invokes its ownership right. However, in accordance with Article 2 corroborated with Article 28 of the Law, the bank will prevail since it was the first to file in the Archive.

Transition Rules: example 2



**Who Wins in dispute over tractor?
Why?**

Surprisingly, the above rule does not apply to transitory situations. Therefore, if a leasing contract was entered before Law 99/1999 became effective, according to article 102, paragraph 4 of the law, the creditor shall have the same rights on the preference, execution, and opposability as under the former law that was effective when the guarantee was established.

The leasing company that entered a leasing contract before Law 99/1999 became effective shall have an ownership right on the asset, opposable to third parties. This right still remains valid after the Law 99/1999 becoming effective, even though the financing statement was not filed in the Electronic Archive in accordance with article 102 paragraph 3, and even if later on other creditors filed in the Archive in good faith. In the example set in the above scheme, the bank will lose in favor of the leasing company who filed in the Electronic Archive, even if it were acting in good faith.

This transitory rule shall be a problem for granting credits with collaterals acquired previously through leasing or conditional sales. For these, the banks shall give credits under very strict terms, with significant interests and asking for more collaterals.

Practical Issues on the Operation of the Electronic Archive of Security Interests in Movable Property

Note: these questions were drafted in the discussions held within roundtables and reflect the real interest of prospective operators and business representatives

1. Will local agents need an accreditation?

According to Art. 16 of ordinance 89/2000, the operators are allowed to empower agents to act on their behalf and directly file the financing statements in the archive. There are no preset legal criteria for granting that power. The relationships between operators and agents are set on contractual bases, and the operator is jointly liable for all the damages the agent cause in exercising the duties assigned to it.

The empowered agents have the obligation to mention on all the documents they issue their capacity, as well as the name / trade name of the operator who empowered them. Also, within 24 hours from the appointment of an agent, the operator shall communicate to the Oversight Authority the identification data for that agent.

Instructions No. 2325 of October 4, 2000 issued by the Ministry of Justice contain special provisions on the authorization criteria for archive operators. Therefore, if the applicant intends to exercise its activity with the help of agents to whom it granted powers, it shall provide to the Oversight Authority the documents showing the legal status that exists between it and the persons to become authorized agents.

2. Is a specific attestation necessary, as for the broker attestation?

The Body of Operators is a professional association. In accordance with Art.12 of Ordinance 89/2000, the Body of Operators shall adopt by-laws for the administration and operation of the Archive, in compliance with Title VI, the Regulation and this Ordinance.

In this capacity, it can issue compulsory norms for operators and authorized agents imposing a minimum professional training for the personnel which is actually operating the Archive.

3. At what point shall start operating the Electronic Archive and what are we supposed to do then?

The Electronic Archive is already launched. During the weeks to come, more and more operators shall be authorized. At any moment, an interested person can file an application with the Ministry of Justice to become an operator. In accordance with the Instructions No. 2325 issued by the Ministry of Justice, any person fulfilling the criteria set in Art.15 paragraph 3 of Ordinance 89/2000 and getting at least 60 points out of a total of 100 points, shall obtain the operator authorization.

A person wishing to become an authorized agent shall directly apply to the authorized operators, as the relation between authorized operators and agents are based on contracts.

4. Can we keep in touch so that in the future, we would be informed through e-mails on what is going on?

The persons interested in the Electronic Archive and in the condition of movable collaterals can enter an e-group created at Iris Center Romania initiative, by sending an e-mail at the following address: Romania_credit-subscribe@egroups.com or radu@iriscenter.ro. Through this e-group, they will be permanently informed on the

operation of the Electronic Archive and they will also be able to discuss within the group the issues regarding the legal status of movable collaterals and the Electronic Archive. Recent information on the activities carried on by Iris Center Romania can be found on IRIS Internet site, which we invite you to visit:
www.iriscenter.ro

5. Is there a rule on the competency of operators in the systems that already operate or is it just a free competition?

„Romania adopted an unusual strategy for operating the electronic archives. Usually, the law designates a single state agency to collect forms, maintain computer data, and deliver information to creditors upon request. Perhaps Parliament feared that the usual model would result in yet another monstrous bureaucracy, charging high fees, imposing complicated procedures, delaying action, and dragging down the economic activity Romania needs to move forward. Instead, Parliament permitted multiple archive operators. The operators may be private organizations, associations, or other juridical entities. They will compete with each other to provide the best service to Romanian businesses, and have flexibility in setting competitive fees.”

Allen Welsh, IRIS Center Romania Project Consultant, excerpt from the article *Law 99's Electronic Archive: Will It Promote Economic Growth?*

According to Article 28 of Ordinance 89/2000, the operators and their agents must comply with the provisions of the Competition Act, Law No. 21/1996 when setting their fees for the services they provide, and also for the actions and deeds that have or may have the effect of restraining the competition on the relevant service market. They must also observe the provisions of Law 11/1991 on the fight against unfair competition.

There is no legal provision to delimit the territorial or material competency for authorized operators and agents.

6. Could a notary cumulate the services and fees for authentication of the security contracts and filing in the archive, if the notary is also an authorized agent?

The authorized operators and agents must comply with the provisions of the Competition Act, Law No. 21/1996 and with those of Law 11/1991 on the fight against unfair competition.

According to the legal provisions, the security agreement may be entered both as an authentic deed, and under private signature. The parties cannot be forced to authenticate the agreement. If the parties decide to go to a notary to authenticate the deed, they cannot be forced to go to the same notary as for filing in the Electronic Archive.

The Notary Public Union shall pass directives for the activity of filing in the Archive carried on by notaries, and also for the level of their fees.

7. What happens in case inconsistencies occur between the data in the form and data stored in the archive?

According to Article 59 paragraph 2, In case there are discrepancies between the data in the financing statement form and those in the security agreement, the data provided in the financing statement form shall prevail in the relationships between third parties and between parties and third parties. However, the law does not mention what happens if there are inconsistencies between the data in the archive and the data in the financing statement form.

Understandably, third parties cannot have access to the financing statement forms, and can only check the data stored in the Archive. Although Art.55 of the law states that data will be stored in the Archive on special forms effective towards third parties. If the forms generate effects towards third parties, it means if there are inconsistencies, the information in the forms shall prevail against the information in the Archive.

For the suffered damages, third parties may sue the operators.

8. How do we know in what place a financing statement was filed?

According to the Archive operation on Internet, a financing statement shall contain the following information: general information on the filing, creditors, debtors, and the collateral. The general information on the filing will include the registration number of the financing statement, the name of the authorized agent, the filing date and hour – up to tens of second, the filing type, destination of the filing, filing history, even if it is only an intention to file.

Thus can be traced the authorized agent that filed, and implicitly the place where the filing was done.

9. Is the database administrator one of the operators or someone else?

From the provisions of Ordinance 89/2000 it results that the Body of Operators as a professional association, is the one to administers the archive.

Article 12 states the principles according to which the Body of Operators carries on its activity: letter “e” states “The Body of Operators shall also bear the charges for creating and maintaining a computerized network for the Archive, for its administration and operation, as well as for the performance of any necessary deed to achieve these duties”, which implies that administering the archive is among the duties of the Body of Operators.

The Body of Operators shall also be able to pass internal regulations for the archive administration and operation, in compliance with Title VI, the Regulation and the Ordinance.

Ordinance 89/2000 states in Article 3 that the Ministry of Justice shall become the Oversight Authority for the Archive, and work with the Body of Operators to improve the administration and operation of the Archive.

10. The filing activity is a commercial activity – the operator is performing deeds of commerce – should it pay VAT?

The Commercial Code sets a list of commercial deeds, which only provides examples and is not enumerative. Therefore, the doctrine developed three criteria that must be taken into account to determine whether an activity is or is not a commercial deed: the dealers in services and goods circulation, the goal to make a profit and the degree of organization of the activity.

The filing activity, even though it is a public service is carried on by authorized agents within an enterprise, with the purpose of obtaining profit. For these authorized agents, the filing activity is a commercial deed.

VAT is paid for a good or service. It shall be also paid for the filing of financing statements. Eventually, VAT will be included in the fees operator take, and will be collected and given to the State.

11. Who shall bear the cost of data transfer from pledge registries to the Electronic Archive? It would not be fair for creditors to pay twice for a public service.

The final provisions of Law 99/1999 – Article 102 – and Go. Resolution 802/1999 – Article 94 – set the obligation for courts to send within 120 days from the moment the archive starts operating, the registries, documents and database they have regarding the pledges and mortgages made and registered before the Law 99/1999 became effective.

According to paragraph 3 of Article 102, within the same time limit, the creditors that were offered movable collaterals, in accordance with the law effective when they established those, will file a financing statement in the Archive, containing a registration certificate stating the priority date and hour for the registration with that register.

The security rights and encumbrances created in accordance with the effective law at their establishment shall be effective as for the priority order, the right to follow the collateral in the hands of third parties, the opposability towards third parties, the court enforcement, and the exercise of other rights.

The law does not state any specific punishment for not filing in the archive previous securities. Although it is not fair towards the prospective creditors for these secured interests to remain hidden for long periods of time, the creditors having secured interests under the prior law cannot be compelled to file in the Archive under the penalty of losing their right, because it would mean to breach the principle of non-retroactivity of laws. The registration of the previous secured interests in the electronic archive being a protection measure for the prospective creditors, it should not be charged on the preceding creditors.

12. The publicity issue for Law 99/1999. Most of the firms and natural persons do not know the new status set by the law. How can it apply then, knowing that secured interests must be filed in the Archive?

From the moment it is published in the Official Gazette, a law is supposedly known and binding for everybody: *nemo censetur ignorare legem*. For the most important laws a period of time is left before they become effective, in order for the persons concerned to get to know them. Title VI of Law 99/1999 became effective 3 months after it was published. Nonetheless, people are still not familiar with the law, and the new system on corporal security interests has not been understood yet. The main goal of the roundtables IRIS Center Romania organized during September 2000, to which you attended was especially to familiarize the main categories of users with the newly established system.

Persons were invited belonging to various categories of the business environment: bank representatives, notaries, legal advisors and attorneys, informatics companies interested in becoming operators, representatives of firms and business associations. On the one hand the new concepts, the archive operation principles and actual situations in the field of the new regulation application were presented, and on the other hand, was the objective to co-interest guests in disseminating on their turn this information.

13. How can be maintained the value of a collateral– since it would worth less if it would deteriorate, shares can lose part of their value, and so on?

According to article 11 of Title VI of Law 99/1999, the creditor's secured interest allows it to perform checks on the collateral, provided it would not affect the debtor's activity. If it finds the collateral was not properly looked after or other facts that would prevent or make difficult the enforcement as set in the contract, the creditor has the right to consider the secured interest to be enforceable right then and start the enforcement procedure. The creditor may exercise this right only if it has reasonable commercial reasons to think the collateral was or is about to be endangered or if there is a possibility for the payment to be disallowed.

Therefore, a diligent creditor shall insert contractual clauses regarding the deeds that could endanger or make impossible the enforcement, and shall also perform periodical checks on the collateral.

14. What happens if the creditor does not renew the financing statement before the expiry of the 5 years period?

According to Article 44 of Title VI of Law 99/1999, a financing statement filed is valid during a 5 year period. The creditor can renew it before its expiry for another 5 year period. If the filing is not renewed, the archive may erase any filing in its database.

In conclusion, if an indolent creditor does not renew the financing statement before the expiry of the 5 years period, the initial financing statement shall be automatically erased, and he will lose the priority right. A financing statement must be renewed before the end of the 5 years period, through an amending financing statement.

15. As far as a security contract is directly enforceable, who verifies whether the conditions for execution are fulfilled?

According to Article 17 of the Law, the security contract is directly enforceable. The enforcement can take place according to the common procedure, set in the Civil Procedure Code or according to the special enforcement procedure set by Chapter V of Title VI of Law 99/1999.

If the special procedure is chosen, the creditor has the right to enter quietly in possession of the collateral – if the contract had the formula “IN CASE OF NON-EXECUTION, THE CREDITOR CAN USE ITS OWN MEANS TO GET POSSESSION OF THE COLLATERAL”

If the debtor does not allow the creditor to take possession, the creditor may take it with the help of state enforcement bodies. In order to be so, the creditor will file an application enclosing a certified copy of the security contract and a description of the asset whose possession is claimed. Within 48 hours, the enforcement body shall take possession of the asset and immediately deliver it to the creditor. A minute shall be drafted in two copies. The special procedure does not provide any opposition for the debtor to the creditor taking possession of the collateral, but only for its sale.

If the common procedure is chosen, the provisions of the Civil Procedure Code regarding to the enforcement of the right shall apply. The enforcement application shall be filed with the enforcement court officer. The enforcement court officer will ask the court approval for the enforcement and will give it a copy of the creditor’s application and the enforcement title. The court can approve the enforcement through a conclusion given in the Council Room, without summoning the parties. A conclusion rejecting the application can be appealed within 6 days from its passing or after its communication. The court shall check whether the legal conditions for enforcement are complied with: if the collaterals are pursuable, if the claim is valid, assessable in terms of money and demandable.

16. How is enforced a collateral if it is made of company shares?

For the enforcement of company shares offered as collateral, we should consider Art.30 of Title VI of Law 99/1999, on the exceptions from Archive publicity. If the collateral is made of company shares, the publicity can only be done by taking possession of the instrument or endorsing it, if the transfer of the instrument supposes the possession or endorsement. Filing in the archive is not a valid publicity method in this case.

For the exchange securities that can be transferred, in accordance with the rules of the stock exchange market, through a simple registration with the registers of the market in which they are sold, and this will be the valid publicity method for the transfer.

In conclusion, we notice that taking possession of the exchange securities is not the question, since the publicity is done through their very transfer.

17. What happens if the collateral is worth much more than the amount of the credit?

If the collateral is worth much more than the amount of the secured interest, it can also be used for securing other loans.

If the debtor does not pay on the due date, the creditor shall be entitled to sell the collateral to satisfy its claim. More situations can occur, according to the clauses of the security contract.

The parties may provide in the contract that on the due date, if the debtor does not pay, the creditor may sell the collateral according to a specific procedure, or may sell it for a minimal price stated in the contract. It is also possible for parties to provide in the contract that if the debtor does not pay, the collateral would become the property of the creditor. If the contract provides nothing on it, Art.69 contains an alternative provision – the creditor could sell the collateral in a commercial reasonable manner to get the best price.

Out of the price obtained, the creditor will take its due, including the enforcement expenses. What remains must be returned to the debtor.

18. What happens with the securities established based on law 99/1999, which are enforced before the creation of the Electronic Archive?

The guarantees set in accordance with Law 99/1999, which are enforced before the Electronic Archive is created do not benefit of the registration certificate issued by the Archive. In accordance with Art. 35 of the Ordinance 89/2000, till the actual operation of the archive the publicity shall be done in the courts pledge registers. The courts would be able to issue registration certificates to prove the publicity legal requirements were fulfilled. Based on the security contract and the court registration certificate, the creditor will be able to apply for the enforcement procedure.

19. Accountancy effects on banks – which are the main creditors – for the payment of the operators' fees.

An interesting issue is for the banks the way operators' fees will show in their bookkeeping.

Thus, if a bank is the creditor in a corporal security contract, if it is the bank that files in the Electronic Archive a financing statement, the debtor shall pay, in accordance with the contract, the operator's fee, as well as any duties due to the Ministry of Justice.

If the debtor pays that amount to the bank, the latter should enter it in the books as income when it comes from the client, and as expenses when it pays it to the operator. This operation would generate a higher turnover figure than the real one.

A solution would be for the debtor to pay directly to the operator. In that case, it should bring to the bank the evidence for payment and filing in the Archive.

20. Operators have the duty to store the financing statements for a 5 year period in accordance with the Electronic Archive Law – how would the two laws mix?

In accordance with Art.35 of the Archive Operation Regulation, the operators have to store the expired financing statement, as well as the data on the persons that applied for filing the financing statements, in accordance with the provisions of Law 16/1996, on National Archives.

As for storing the documents, the National Archives Law states that:

Art. 12. – The drafters and holders of documents have to keep them in proper conditions, preserving them from destruction, deterioration, theft or commercialization in other conditions than the legal ones.

The legal entities drafters and holders of documents have to keep them in specially arranged spaces for archive. The new constructions for archive creators and holders must be approved by the National Archives or the territorial departments of the National Archives, as the case may be, and can be executed only if there are spaces for storing documents.

The National Archives and the territorial departments of the National Archives can prolong the time documents are stored with the holders, until they provide the necessary spaces for keeping them.

The archive stockrooms must be provided with proper storage and preservation means, according to the documents format and the support, and with means, installations and systems for fire safety and extinguishing.

As for the necessity to train the operator' staff in accordance with Law 16/1996:

Art. 23. – The legal entities drafters and holders of documents mentioned in Article 2, have the duty to create archive compartments or to designate persons in charge with archive problems, according to their value and quantity.

The designation of personnel in charge with the archive activity, the structure and competency of the archive compartments are to be set by the management of the agency creating and storing documents, with the approval of the National Archives or, as the case may be, of the territorial departments of the National Archives.

Art. 24. – The training, attestation, and improvement of the specialized staff of the National Archives, as well as of other such agencies is done through the Archive Faculty and the National School for Archive Improvement.

21. What is the „territorial extent” criteria?

Ordinance 89/2000 mentions in paragraph 3 of Art. 15, the extent within the territory of the applicants as an essential criterion for operators' authorization. It was detailed through Instructions No. 2325 of October 4, 2000 on authorization criteria for archive operators. To determine the maximum number of points each applicant gets on this criterion, the coverage capacity for cities, towns and villages where courts of justice are located will be taken into account, by opening at least one territorial bureau. One point shall be granted for each place in which the operator will open at least one territorial office. The maximum number of points is 20, so that an applicant covering at least 20 localities shall get them.

This means the extent within the territory should be understood as covering 20 localities. Thus is confirmed the previous unofficial interpretation of the Ministry of Justice, according to which, the extent within the territory should refer to the regional level and not the national level.

22. Does the intentions to secure interests in movable property count among the 50 filings covered by the insurance?

The law does not expressly provide that intentions should be insured through a letter of guarantee, neither that it would not be necessary.

Thus, the law sets different legal conditions for the initial financing statement and for the intention statement to make a financing statement. The intention is valid for a 2 months period and shall not be effective unless if it is followed by an initial financing statement filed within two months.

On the other hand, the ground for a professional guarantee, such as the one in Ordinance 89/2000 is the possibility to cause damages by inaccurately filing the financing statements. Article 20, which details the professional guarantee obligation uses the words filing operation. In accordance with Article 21, the damages caused through the filing activity carried on by an operator will be covered by the insurance or the letter of guarantee. If the damage is not fully recovered, then the provisions of the common law on civil liability shall apply.

The issue is to know whether inaccurately filing an intention can cause a damage. Let's take the following situation: a bank registers an intention to establish a financing statement for a client, Mr. Ion Popescu. The authorized agent misspells the debtor's name and writes Ion Pop. Another prospective creditor wishes to grant a loan to Ion Popescu, searches in the Archive and finds no registration on this name. The second creditor, hereinafter called Bank B, files in the archive. The next day, Bank A files an initial financing statement for Ion Popescu. Both creditors acted in good faith and filed in the archive.

No matter what creditor would prevail, a prejudice would occur, and the causal link would be set by comparing it to the incorrect filing of an intention to register a financing statement. In conclusion, the incorrect filing of an intention may cause damages.

The law does not make a distinction between an intention and a financing statement when mentioning the „filing” operation. The reason for filing a professional insurance is the possibility of prejudice occurrence. We demonstrated that a prejudice may be caused. Then, there are no bases in favor of excepting intentions from the obligation to pay a professional guarantee.

One might say that the financing statement that must be filed within 2 months would anyhow be included in the guarantee obligation, and the intention would not be effective unless followed by an initial financing statement.

However, this explanation cannot be accepted, since it is not mandatory for the agent who registered an intention to also register the initial financing statement. If we did not think a guarantee for accurate registration was necessary, it would mean we obliged the creditor to file the initial financing statement with the same operator or agent who also registered the intention. This is not only against competition, but also inequitable for the creditor who must wait till the operator paid the additional guarantee, if it reached the

maximum number of guaranteed filings. It should be forced to choose between losing the secured interest or the priority ranking.

23. How do we tell an intention to file a financing statement from an initial financing statement?

At the general filing information – information appearing in the financing statement as it shows when on-line searches are performed, the last rubric displays whether the filing is that of an intention to file. It is a separate field that will make the difference between the registration of an intention and a financing statement. This separate field is stated in the Regulation.

24. How can we prevent false filings?

The question how we can prevent false filings is often asked. The answer is simple: we cannot. Authorized operators and agents only check whether the person who brings the filing form is written as debtor or creditor or is their representative. Operators don't see the contract and cannot tell whether it exists or not. These verifications would cause unnecessary delays and complications. Even if an authorized agent could see a hand written contract – as the law allows the secured contract to be entered by private signature of the parties, it would still not know whether it is a true or fake contract. It would take either thorough verifications that would involve the presence of both parties and checking their identity or an authenticated deed. Moreover, operators would be liable for all these verifications and the entire procedure would be more expensive.

This is not necessary. On the one hand, the archive only has a warning function, so that if a filing is found to include the name of a person, the prospective creditor should request additional information from the debtor or look for other sources. On the other hand, a person not acting in good faith could make a false registration only if it appeared to be the creditor, and thus the evidence of its deed would remain in a public database.

25. Will operators and their authorized agents have to pay the writing off of the initial equipment of the Electronic Archive?

In accordance to paragraph 3 letter e of Art. 12 of Ordinance 89/2000, the Body of Operators shall also bear the charges for creating and maintaining a computerized network for the Archive, for its administration and operation, as well as for the performance of any necessary deed to achieve these duties. The operators will contribute to covering the common expenses.

26. Why should the American model of secured transactions work in Romania?

Romania is now in the economic situation in which the United States were during the 50's. There are many ways for overcoming the economic recession, and secured interests in movable property are the instrument needed to launch business.

Same as it happened in Romania prior to Law 99/1999 became effective, in the 50's the United States had a lot of different legal instruments for securities, which did not provide the necessary safety to creditors: conditional sales, financial leasing, pledge, assignment of debt and others. The complexity of the rules applying to these instruments, as well as the fact that one could either lose or win according to the name given to the contract were not the kind of things to encourage credit. Beside, there was the inefficiency of court enforcement, exactly as it is in Romania.

For an identical situation, the same solution should produce the same effects; regardless of nationality, the legal and economic judgment is the same.

27. If the registration is not made because of the ignorance, ill faith or something else or is postponed or the system rejects it and during that time the collateral is sold, Law 99 cannot apply because no one filed.

Law 99 does not apply only in the situations in which persons file in the archive, but also in case they don't. Between a creditor who did file in the archive and another one who didn't, the creditor who filed shall have priority, regardless of the date when the security contract was entered. Also, if a creditor postponed filing in the archive and meanwhile the collateral was sold by contract, the creditor would not be allowed to pursue the collateral in the hands of the third person that bought it.

28. How is publicity done for negotiable securities?

Article 30 of the Law states an exception from publicity in the archive for negotiable securities. Thus, in case the collateral is a corporal security, a title representing assets, including a deposit certificate or a negotiable bill of lading, archive registration is not a valid publicity method. Publicity can be done only by possessing or endorsing the instrument, if the transfer of the instrument in question requires possession or endorsement. Possession must be public. Possession is public only if third parties can easily acknowledge it.

For securities that may be transferred, according to the securities market regulations, through a simple registration in the registers of the market where they are sold, the publicity is done through this transfer.

29. Art. 41 states that if a debtor has the possession on a collateral and alienates it, the creditor is entitled to compensation. To what situation does it apply?

Article 41 applies every time a creditor suffered a damage due to the destruction, deterioration or depreciation of the collateral due to the lack of care of the debtor, when the debtor had possession over the asset.

Article 41 also regulates the situation in which a collateral was sold for less than 1,000 Euros in an auction. In that case, in accordance with paragraph 1 of Article 38, a collateral cannot be held against the person who purchased it, even if the buyer knew the situation and did not act in good faith. If due to this sale the creditor suffered a damage the debtor can be forced to pay compensation of at least 500 Euro.

30. Legal entities authorized to operate the Archive will each appoint an Archive Director – a highly moral person – how will it be determined?

Article 46 of the Law stating the Archive Director had to be a highly moral person was abrogated by Ordinance 89/2000. according to the Ordinance provisions, cannot be appointed Archive Director a person who, according to the law is incompetent or was convicted for fraudulent management, abuse of trust, false, use of forged documents, fraud, embezzlement, false evidence, bribery, and also for the crimes mentioned in Title VIII of Law [No. 31/1990](#) on trading companies, amended and republished.

31. How much do you think a creditor would pay for a filing?

The taxes for the Ministry of Justice are paid separately, and Instructions issued by the Ministry of Justice on October 3, 2000 state the use of MF standard receipt books. The taxes mentioned in Art.24 of ordinance 89/2000 are 300,000 ROL for an initial financing statement; 100,000 ROL for an amending, void, and termination statement, and 200,000 ROL for the statement of assignment of debt, reducing the guarantee to part of the collaterals and continuation. The quantum of these taxes will be updated through Government Resolution, in accordance with the official rate of the inflation index.

The operator and authorized agent fees will reflect the expenses with system maintenance, contribution to the Body of Operators, initial authorization fees and reauthorization fees, depreciation of the equipment and so on. Each operator shall be free to set its own fees, observing the provisions of the Competition Act, Law 21/1996. according to Art.27 of Ordinance 89/2000, operators may charge different fees for the priority services performed, for Internet and on-line filings, according to their own commercial strategies.

In Ukraine the filing fees are 3.00 to 6.00 USD. For the moment we cannot make an evaluation in Romania, especially since the free competition system applies. However, a high level of fees would discourage the creditors.

32. Is it possible to file an initial financing statement without a contract ?

The Law does not state that a security contract should be entered prior to filing in the archive. The only provision that could be considered to imply this is Art.32 of the Regulation, according to which the parties that have not yet entered a security contract may file their intention.

Since the operator and authorized agent do not have to check whether the information in the form is accurate – in accordance with paragraph 2 of Art.49 of the Law – it is possible for a financing statement to be filed before a contract is entered. The law expressly states that a security contract can be validly entered under private signature. Under these conditions, it would be impossible to check whether the filing in the Archive was done before the contract was entered. Also, a simple filing in the Archive, without a contract validly entered cannot be effective.

In conclusion, an initial financing statement can be filed in the archive before a contract is entered. As far as the parties can count on entering a security contract, they would prefer to directly file an initial financing statement, in order to avoid paying twice

the operator's fee. If they are not confident about this, they will file an intention because they would not pay the duties for the Ministry of Justice.

33. What would mean to become an operator in terms of cost – the equipment, the conditions, the Internet connection or intranet, is there safety?

Compliant with the provisions of Instructions 2325 of October 4, 2000, the applicant must provide documents to attest it has the technical equipment required – at least two computers connected to Internet, at least one printer compatible with the computers, telephone and fax machine – for each territorial bureau.

34. Is there a funding for this program?

The software program was made with a funding program in cooperation with an American consultant. It is a unique software, with multiple security levels, which operates in an interactive system on Internet, allowing on-line filings and searches.

Even though the filing activity is a public service, for operators it is a commercial activity. The operators will receive no funding, as one of the authorization criteria is to have enough financial resources to carry on the operator activity.

35. Is there an obligation for the operator to carry on only this activity?

The law does not provide any express requirement for the operators to have as unique object of activity filing financing statements in the Archive. On the contrary, from the way the legal provisions are drafted, it results that operators are legal entities with enough financial and technical resources and a large number of territorial offices. The law mentioned as initial operators the Notary Association, the Trade Registry and Institute for Informatics.

From the economic point of view, there is no doubt that it would be more advantageous for operators to have as main object of activity filing in the archive, at least during the first period.

36. Can a natural or legal person ask an operator for information regarding a client – be it creditor or debtor?

According to the Law, the Archive is organized in a unique database, easily accessible. Article 56 of Title VI of the Law states that the archive is public and can be accessed unlimitedly and unconditionally. It means any person may perform any kind of search in the Archive.

There is a question whether an operator could perform thorough searches in the Archive and make available to interested persons reports containing detailed information on the contracts filed by a specific creditor or information on a specific debtor. These information could be valuable and often required.

Instructions 2325 state the obligation to provide free access to the information in the archive by making available to the public one or several terminals to retrieve information in the archive. Art.47 of the Regulation states that any person, including operators and

authorized agents, could perform retrieval services and copy information from the archive database. These operations would be done based on a fee. Art.47 also contains an exemplificative list of some retrieval and copying services. Other services could also be provided. The client could not ask the operator for other information than the one the archive contains, which is public information. For this information, the client could ask to perform specific search. Nothing would then prevent the operator/authorized agent from offering specific search services as required by clients.

37. Is the Internet the only information mean?

The Internet should not be the only information mean for the business environment regarding the new system for secured transactions. These would mean significant changes for some legal institutions and especially changing the economic view of the system. Even though it is the fastest, the electronic information is not the most accessible.

Interested institutions and operators would have to undertake an active role in preparing the business environment and the population in order for the archive to be successful.

38. What status has the professional guarantee required from operators?

In accordance with the law, operators would have to pay a professional guarantee of 5,000 Euro as letter of guarantee or insurance. This guarantee would cover 50 filings performed by the operator and its authorized agents, after which their access to the archive would be blocked. According to the general opinion, this guarantee is too expensive and does not cover enough filings. A solution would then be to cover more filings. Another proposed solution was to convert this professional guarantee into a minimum limit of company registered capital, as it is in other fields of activity.

The issue of the operators' professional guarantee was discussed during every roundtable held and a lot of questions were asked on this subject. What happens if an operator may still perform 10 filings and a person comes and asks for 30 filing forms? What is the operator's liability towards the authorized agent if the latter is harmed because the additional letter of guarantee was not filed on time and this caused the blockage of access? How can an operator control the number of filings, if it has several authorized agents, and each of them may perform the 50 filings in just one day?

40. What happens if the operator does have a letter of guarantee – can it not be given credit and bring the letter afterwards?

In accordance with the law and the technical characteristics of the archive program, an operator has to permanently be informed on the technical characteristics of the archive program, and on the number of filings it can enter. When the 50 filings are done, its access is automatically denied until it provides the evidence for payment of an additional guarantee. The Ministry of Justice would revoke its authorization if the operator does not provide the evidence for payment of an additional guarantee within 3 months from the moment its access to the archive is denied.

Legislation Supplement

- **Law 99/1999, Title VI Chapter IV as modified by the Ordinance 89/2000**
- **Instructions regarding payment of fees from the Ordinance 89/2000**
- **Instructions no. 2325 concerning authorization criteria for the Archive operators**

Law No. 99, Title VI (1999)

Legal status of security right in movable property

CHAPTER IV

The electronic archive for security rights in movable property ¹

Art. 45². –

(1) The operations related to security rights in movable property are registered at the Electronic Archive for security rights in movable property, name *Archive* in this Title.

(2) The Archive is an evidence system for the priorities of security rights in movable property, structured on persons and assets³.

(3) The Government, through its Oversight Authority, will lease, through public auction⁴, the right of any natural person or legal entity who meet the requirements set by the regulations to make use of the archive. The authorized persons make up the group of Archive operators, named the *group of operators* in what follows. They can form an association⁵ under the law.

Art. 46⁶. –

(1) Legal entities authorized to operate the Archive will each appoint an Archive director, named *director* in what follows. The director will have to be a moral person, sufficiently well off to cover eventual damages. Authorized legal entities are responsible for the actions of the person they have appointed director⁷.

¹ Chapter IV was amended by the Ordinance 89/2000 of August 29, 2000 regarding some measures for the authorization of operators and filings in the Electronic Archive for Security Interests in Movable Property.

² Art. 45 was abrogated through Art. 34 of Ordinance 89/2000.

³ The provisions of the first two indented lines are to be found in the first line of Article 2 of Ordinance 89/2000, according to which „the filing of operations concerning security rights in movable property and the publicity of legal acts defined by Title VI shall be performed in the Electronic Archive for Security Interests in Movable Property. The latter sets a priority ranking system for security rights in movable property and publicity, according to persons and assets.”

⁴ The provisions of paragraph 3 regarding the concession were replaced with provisions on operators' authorization. Thus, in accordance with Art.3, the Ministry of Justice as Oversight Authority authorizes the operators to file financing statements in the Archive. Art.15 states that within 30 days from the date of filing the complete documentation for an operator's authorization, the Oversight Authority has to decide on the authorization application. The authorization is granted for 3 years through an Order of the Minister of Justice, and can be periodically renewed.

⁵ In accordance with Article 12 of Ordinance 89/2000, within 30 days from the authorization of the first operators, they shall gather in a professional association called the Body of Operators. It would represent their interests towards the Oversight Authority and third persons.

⁶ Art. 46 was abrogated by Art. 34 of Ordinance 89/2000.

⁷ In accordance with Ordinance 89/2000, legal entities authorized to file in the Archive shall appoint one or several archive managers to exercise the rights and obligations entrusted by the legal entity with respect to the archive activity. Art. 7, 8, 9 and 10 contain provisions concerning the archive managers. Cannot be appointed Archive Manager a person who, according to the law is incompetent or was convicted for fraudulent management, abuse of trust, false, use of forged documents, fraud, embezzlement, false

(2) The operators are authorized, under the law, to grant other persons the competence to register directly at the Archive the movable corporal security forms, named *authorized agents* in what follows⁸.

Art. 47. –

(1) The Government will appoint the governmental institution, named *Oversight Authority* in what follows, that will supervise the group of operators and authorized agents in order to ensure the compliance with the provisions of this Title⁹.

(2) Every time it considers necessary, the Oversight Authority will check the operation of the Archive, in order to verify the compliance with the legal provisions.

(3) The Oversight Authority may immediately withdraw the authorization given to an operator or authorized agent, if it finds out that the operator or the authorized agent did not comply with the provisions of this Title or the corresponding enforcement regulations.

Art. 48. –

(1) The Oversight Authority must investigate any complaint regarding the failure to comply with the provisions of the present Title and the other regulations by the operators, authorized agents or the Archive Director.

(2) The Oversight Authority will have to inform the operators of his conclusions and decide on the most appropriate measures.

(3) The Oversight Authority has the competence to take all the Archive registrations, to take control and do the financial-accounting checking of a department, in case the latter is guilty of serious and repeated violations of the law¹⁰.

testimony, bribery, and also for the crimes mentioned by Law No. 31/1990 on trading companies, amended and republished.

⁸ In accordance with Article 19 of Ordinance 89/2000, operators are allowed to empower agents to act in their name and on their behalf, to directly record financing statements in the Archive. The operator shall be jointly liable for all the damages caused by its agent in performing the duties that were granted to it. The authorized agent must mention on all the documents it issues, the quality of authorized agent, and also the name / trade name of the operator that granted this duty to it. The relation between operators and their agents are set on contractual basis. In accordance with Article 17 of Ordinance 89/2000, within 24 hours from the appointment of an agent, the operator has to communicate to the Oversight Authority the identification data for the agent, as well as any changes that occurred.

⁹ In accordance with Article 3 of Ordinance 89/2000, the Ministry of Justice becomes the Oversight Authority for the Archive.

¹⁰ Article 3 of Ordinance 89/2000 details the duties of the Oversight Authority. Thus, the Ministry of Justice authorizes the operators to file financing statements in the archive; monitors the financing statements filing activity performed by the operators and their agents; administers and maintains the computerized safety system which contains the storage devices for the copies of the files in the Archive's database and performs financing statements filings in the Archive in order to apply the legal provisions on movable property guarantees in cases of emergency, when the authorized operators are not able to meet the public demand for filings, which would lead to a backlog of filings exceeding 3 days; controls the operators activity and that of their agents, as well as the Archive operation to ensure the compliance with the legal provisions in force; examines any complaint regarding to the non-compliance by the operators, the Archive Directors and authorized agents of the legal provisions and orders appropriate measures to correct the situation; finds through its specialized bodies any contravention provided by this ordinance occurred and applies the corresponding punishments; monitors the activity of operators and authorized agents in accordance with the fair competition rules, informs the Competition Council, and the Competition Office

Art. 49. –

- (1) The Archive will be organized as a unique database, easily accessible.
- (2) The Archive will register the security notices and other specifications, without checking their legality or other aspects. The registration of the security notices is an obligation, and the Archive staff does not have the right and cannot be obliged to take measures with regard to the accuracy of the Archive information.
- (3) The database will display all information introduced, which must be updated regularly.
- (4) The corporal security notices will be alphabetically indexed, and the registrations will be searched after the name of the debtor or the number, for cars.

Art. 50. –

The registration of a security notice in the Archive will not be conditioned by the presentation of documents attesting the payment of taxes on the asset engaged, the loan granted or other such taxes. The registration will not be conditioned by the verification of the possession of the collateral, either.

Art. 51¹¹. –

- (1) The registration fee for security rights in movable property will be set on the free competition basis by the operators and authorized agents.
- (2) The Oversight Authority will ensure a fair competition.
- (3) The Oversight Authority will forbid the publication of comparative tables with the level of fees collected by the operators and authorized agents for registration services and authorization by the operators of new authorized agents.

on any breach of the same and may suspend or revoke the right of an operator or agent to perform filings in the Archive, when there is enough evidence regarding these practices; suspends or revokes the right of an operator or agent to file in the Archive, if it finds they repeatedly breached the legal provisions and its decisions; cooperates with the operators and their agents, and with the Body of Operators, to improve the qualities and technical performances, the administration and the operation of the Archive, and also the relation between the Archive and the terminals it uses; assures in accordance with Art. 54 paragraph (2) of Title VI, a direct and free access for the public to reading and copying the information recorded in the Archive, without setting other rules on the access and obtaining information from the Archive.

¹¹ In accordance with Article 27 of Ordinance 89/2000, the level of the operators' fees for filings, for access to the database and for other ancillary services is freely set, in compliance with the provisions of the Competition Law No. 21/1996. The operators may charge different fees for different geographical areas and for the priority services performed, for Internet and on-line filings, according to their own commercial strategies in compliance with the legal provisions. The operators, their authorized agents and the Body of Operators are not allowed to publish comparative tables for the level of tariffs or to adopt any measure limiting the advertising with respect to the level of the tariffs collected by the operators and their agents for filings or for operators authorizing new agents.

Art. 52¹². –

- (1) The operators have the right to set access fees to the database, whose level should be sufficient to cover the operation costs.
- (2) The financial situation of the operators regarding the expenses related to the operation of the database will be checked by a company chosen by the operators from a list approved by the Oversight Authority.
- (3) The Oversight Authority will decide if the funds provided for the operation of the database are sufficient and has the right to enforce the necessary measures for enlarging the competition, in case the collections resulted in excessive profit for the operators.

Art. 53. –

- (1) If the operator uses more than one computer or the authorized agents use separate computers to introduce registrations, the various registration databases will be connected in a network, so that the Archive functions as one system.
- (2) The Archive will use interconnected databases of a type that allows any person to search and register electronically from any point of the network. In this case, the Archive Director will administrate the extended network.

Art. 54. –

- (1) The Archive will be public and people will have access to it during the hours established by the Oversight Authority.
- (2) Unmediated access will be free of charge, unlimited and unconditioned. The Archive can be accessed by the public in order to obtain and copy information. Distance access by telephone, Internet or other means provided by the regulations will be allowed as well, even outside schedule.

Art. 55. –

- (1) According to this Title and the corresponding enforcement regulations, the data should be introduced in the Archive on special forms that will represent the document for archive registration and will be held against third parties.
- (2) The enforcement regulations corresponding to this Title will set the use of universal technical standards for the Archive database program.

Art. 56. –

- (1) The requester who wishes to register a document in order to make public his intention to create a security right in movable property will have to submit or send the Archive, by any means, a corporal security notice form filled in according to the regulations requirements. This form does not require certifications or signature authentication, the payment of any fees.

¹² In accordance with Article 29 of Ordinance 89/2000, the financial situation of the operators regarding the expenses for the database will be checked by financial auditors, in accordance with the provisions of the Emergency Government Ordinance No. 75/1999 on the financial audit activity. The Oversight Authority will decide whether the funds for the operation of the database are sufficient and it has the right to order appropriate measures to enlarge the competition if it finds that the collected fees led to excessive gains for the Body of Operators.

(2) The registration of the intention to create the security loses its effect after two months from registration.

(3) If the security is created, it will have the rank on the date when the intention was registered.

Art. 57. –

(1) When a person authorized to operate the Archive receives a form, he/she will have to introduce the information on the form in the database either manually or by electronic means.

(2) The database will have to specify, accurately and beyond all doubt, the moment when the notice was registered, the registration date, hour, minute and second.

Art. 58. –

Each creditor must send the debtor a copy of the security notice, within maximum 24 hours from its registration.

Art. 59. –

(1) The security notice includes: the name, domicile or residence or chosen domicile of the debtor, name, domicile or residence or chosen domicile of the creditor, the assets or rights engaged as security, the registration number/series of the title related to the asset engaged as security, data on the main real estate if the assets engaged as security are accessories to it and if the secured obligation is conditioned, the expiration deadline for the registration – according to the security contract – and, optionally, the maximum value of the secured obligation.

(2) In case there are discrepancies between the data in the security notice form and those in the security agreement, the data provided in the security notice form will have priority in the relationships between third parties and between parties and third parties.

Art. 60. –

(1) For the purpose of exercising the rights and obligations of parties towards third parties, they will be considered to have as chosen domicile the one specified in the corporal security notice. All notifications sent according to the security contract at the address specified in the security notice form will be valid and will have effects.

(2) Any of the parties will be able to change domicile, by informing the other party and the Archive.

Art. 61. –

(1) The secured creditors will ask the operator to specify in the Archive the cessation of a security within maximum 40 days from the cessation of the secured obligation. The secured creditor who does not fulfill this obligation remains responsible for direct or indirect damages caused to the debtor. In this case, the value of the damages to be paid cannot be less than the equivalent in lei of 500 euro.

(2) The Archive regulations will establish verification methods attesting that the specification was indeed required by the secured creditor, as well as for the erasure of the security from the database.

**Instructions October 3, 2000 Regarding the way of collecting and paying the fees
stated by the Government Ordinance No.89/2000 - measures for authorizing
operators and filings in the Electronic Archive of Security Interests in Movable
Property Published in the Romanian Official Gazette No. 502/10.12.2000**

Article 1

- (1) In order to get the operator authorization and for each renewal of the authorization, operators shall pay the 2,000,000 ROL fee, provided by Art.23 paragraph (1) of the Government Ordinance No.89/2000, published in Part I of the Romanian Official Gazette No. 423/09.01.2000.
- (2) Operators shall also pay the 500,000 ROL fee for each agent authorized to file in the Archive, provided by Art.23 paragraph (2) of the Government Ordinance No.89/2000.

Article 2

(1) The beneficiaries of financing statement filing services shall pay the following fees stated in Art.24 of Government Ordinance No.89/2000:

- a) 300,000 ROL for each initial financing statement;
- b) 100,000 ROL for an amending statement of the initial financing statement;
- c) 100,000 ROL for a void statement of the initial financing statement;
- d) 100,000 ROL for a termination statement of the initial financing statement;
- e) 200,000 ROL for a statement assigning the interest in the collateral;
- f) 200,000 ROL for a statement reducing the guarantee to part of the collaterals mentioned in the initial financing statement;
- g) 200,000 ROL for a continuation statement for the initial financing statement.

Article 3

- (1) The amounts collected through the fees set in Art. 23 and 24 of Government Ordinance No.89/2000 are established and used as extra-budgetary incomes available to the Ministry of justice.
- (2) The use of the amounts collected according to paragraph (1) and the detailed list of expenses will be set through an order of the Minister of Justice.
- (3) What remains available at the end of the year will be spent the next year with the same destination.
- (4) The financial and accountancy departments within tribunals and the Ministry of Justice will be in charge of the bookkeeping for the amounts mentioned in paragraph (1) and the compliance with their destination.

- (5) The quantum of the fees set in Art. 23 and 24 of Government Ordinance No.89/2000 shall be updated through government decision, according to the official inflation ratio.

Article 4

- (1) The authorized operator may personally, or through a representative or a specially appointed employee, collect the fees in cash for financing statement filing, which will appear separately in the financial and accountant records.
- (2) The operator authorized to enter filings or its representative will inform the applicant on the quantum of the fee due for filing a financial statement, according to the nature of the latter.
- (3) To perform the duties stated in paragraph (1), the authorized persons shall ask the territorial fiscal authority to issue receipt books.
- (4) The fully filled out receipt books shall be kept and recorded by authorized persons, in order to be checked afterwards.
- (5) Collecting fees in cash can be done based on standard receipt books of the Ministry of Finance, issued by the fiscal authority located where the authorized person has its registered office, and the receipt books shall be administered in accordance with the conditions set for fiscal agents.
- (6) A receipt shall be filled out in two copies and shall include the first and last name of the payer, the registration number of the financing statement for which the fee was calculated, the amount collected in figures and letters, the payment date and the signature of the issuer. The original receipt shall be given to the payer.

Article 5

- (1) The fees set in Art. 1 and 2 are due in advance and transferred by the operator or its representative in the bank account No.5003, opened on behalf of the Tribunal of that County (*Judet*), or, as the case may be, on behalf of the Tribunal of Bucharest, at the Treasury of the capital cities of the counties or of Bucharest, with the stated destination “fees for operator authorization” or, as the case may be, “fees for filing financial statements”. Tribunals cannot make expenditures out of the incomes resulted from the fees for operator authorization or for filing financial statements, transferred in the above-mentioned bank account.
- (2) The amounts collected in cash will be transferred the next business day to the State Treasury in the place where the authorized person has its fiscal office, in the bank account mentioned in paragraph (1).
- (3) Not transferring the amounts mentioned in paragraph (2) is punished in accordance with the legal provisions regarding the enforcement of budgetary debts.
- (4) The authorized operators will monthly communicate to the Oversight Authority the situation with the amounts collected during that month.

- (5) Tribunals will transfer twice a month the collected amounts till the 16th day of the month and the second day of the next month, to the bank account No. 50034265841, opened at the Bucharest Treasury for the Ministry of Justice.

Article 6

- (1) The fees stated in Government Ordinance No.89/2000 must be paid in cash or through bank transfer, as follows:
- a) Operators will pay the fees mentioned in Art.23 through bank transfer to the bank account No. 50034265841, opened at the Bucharest Treasury for the Ministry of Justice;
 - b) The fees for filing the financing statements mentioned in Art.24 are paid by natural and legal persons, either in cash or by payment order in the bank account mentioned in Art.5 paragraph (1) of these instructions.
- (2) For the amounts paid in cash, the payer will have issued a receipt as payment evidence.
- (3) The copy of the payment order, stamped by the payer's bank, is evidence for the payment and shall be attached to the financing statement.

Article 7

In order to carry out the provisions of these instructions, the authorized persons must organize and keep a financial and accountant record in accordance with the legal provisions.

**Instructions No.2325 , October 4, 2000 regarding the authorization criteria for
Archive operators, published in the Romanian Official Gazette No. 502/10.12.2000**

The State Minister, Minister of Justice, issues the following instructions in accordance with Art.15 paragraph (4) of the Government Ordinance No.89/2000 regarding some measures for authorizing operators and filing in the Electronic Archive for security interests in movable property, Published in Part I of the Romanian Official Gazette No. 423/09.01.2000, and in accordance with the provisions of Art.10 of the Government Ordinance No.65/1997 regarding the organization and operation of the Ministry of Justice, Published in Part I of the Romanian Official Gazette No. 43/03.14.2000, with later amendments:

Article 1

- (1) To get the number of points required for an operator authorization, the applicants, natural and legal persons, shall have to meet the criteria stated in Article 15 paragraph (3) of the Government Ordinance No.89/2000.
- (2) Each applicant may receive maximum 100 points.
- (3) The authorization shall be granted to those obtaining minimum 60 points.

Article 2

The criteria for getting the necessary points are the following:

1. The extent within the territory of the applicant and the existence of enough financing resources for exercising the operator activity.
 1. a) The extent within the territory of the applicant – maximum 20 points. To fulfill this requirement, the coverage capacity for cities, towns and villages where courts of justice are located will be taken into account, by opening at least one territorial bureau. One point shall be granted for each place (city, town or village that has a court of justice), in which the operator will open at least one territorial office.
 1. b) The existence of enough financing resources for exercising the operator activity –15 points. The applicant shall enclose to the authorization application documents proving it has the technical equipment needed to carry on the activity of an Archive operator (at least two computers connected to Internet, at least one printer compatible with the computers, and phone and fax within all the territorial bureaus it will open). If it carried on activity, the legal entity applicant shall also provide its last balance sheet, approved by the Territorial State Financial Control and General Department of Public Finance or that of Bucharest, as the case may be.
2. The number of territorial offices to receive financing statements for filing in the Archive – up to 30 points. This criterion considers the number of territorial bureaus that the applicant undertakes to open in cities, towns and villages where courts of justice are located. If the applicant intends to run this filing activity through authorized agents, it shall communicate to the Oversight Authority the documents attesting the existence of legal bases between it and the persons that will become authorized agents. One point is

granted for each opened territorial bureau. Also, the applicants, natural or legal persons, shall have to prove they are the owners or have the use for a 3 years period at least for the spaces in which the filing activity shall be carried on. If the applicant is about to open a territorial bureau in a residential building, it shall hand to the Oversight Authority a document containing the approval of the owners' association for carrying on the activity of operator in that building.

3. The existence of an insurance policy or guarantee for professional liability, above the minimum level set in Art.20 paragraph (1) of the Government Ordinance No.89/2000 – 10 points.

4. Providing services for the public at large - 10 points. To get the points for that criterion, the applicants shall have to accept the filings of any interested person and not only those handed by specific categories of interested persons. Applicants shall enclose to the authorization application a statement through which they undertake to provide services to the public at large, in every territorial bureau they will open.

5. The ability to create facilities to a free access for the public to the information contained by the Archive - 10 points. Applicants shall have to ensure free access to the information within the Archive to any interested person, through one or several terminals for data retrieval (such as specialized offices). In order to do so, the applicants shall enclose to the authorization application a statement through which they undertake to allow free access to the information contained by the Archive, in accordance to what was said above.

6. Capacity to allow access to the Archive through new technologies - 5 points. This requirement is fulfilled by the applicants who have a good Internet connection with a minimum 64 kb/s band wide in all territorial bureaus they are about to open. Consequently, the applicants shall hand to the Oversight Authority copies of the contracts entered with the Internet supplier stating they meet this standard. If the applicant is an Internet provider, it shall enclose to the authorization application a statement through which it states it fulfills this standard, and will be liable for its accuracy.

Article 3

- (1) In order to hurry the Electronic Archive's opening, the applicants who will file for an operator authorization application till October 16, 2000, shall give the documents stated in Art. 13 and 14 of the Government Ordinance No.89/2000, as well as the letter of guarantee or the evidence for subscribing an insurance policy, mentioned in Art.19 of the Ordinance.
- (2) If the applicants will not bring the documents stated in these instructions before the date mentioned in paragraph (1), needed to assess the degree of compliance with the requirements No. 1.b), 2, 3, and 6, the authorization application and the above mentioned documents shall be accompanied by a statement for which they will be liable, regarding the level of compliance with the above mentioned authorization criteria.
- (3) In order to do so, the applicant's statement must contain mentions regarding: - the extent of the applicant within the territory, mentioning the cities, towns and villages where courts of justice operate, in which the applicant shall carry on the

operator activity; - the number of territorial bureaus the applicant will open, mentioning the identification data for the buildings where a financial statement filing activity shall be carried on (No., Street), as well as the nature of the right it has on the building; - the name and address for natural persons, and the name and registered office for legal entities that will become authorized agents, if the applicant wishes to carry on the filing activity with authorized agents; - the technical equipment (computers, printers, telephone, fax) in each territorial bureau that shall open; - the Internet connection speed, guaranteeing a communication channel for at least 64kb/s.

- (4) Applicants who file authorization applications before October 16, 2000 shall send the documents mentioned in these instructions to the Oversight Authority, within 30 days from getting the operator authorization.
- (5) To meet the other criteria stated in these instructions, applicants will file the mentioned statements.
- (6) If the Oversight Authority will find when checking the documentation filed after the authorization is granted, that an operator supplied untrue information, or did not supply it within the time limit, it shall withdraw its authorization.

Article 4

The publicity department, the notaries public, enforcement officers and legal advisors within the Ministry of Justice shall take the necessary measures to carry out the provisions of these instructions.




Bucharest, October 4, 2000 No.2.325/C

How can Secured Transaction Law 99/1999 promote economic growth in Romania?





GOAL:

To expand the Romanian business community's access to credit by expanding collateral based lending through the use of the Electronic Archive.

POINTS:

-  Secured Transaction Law, Law 99/1999 is an important tool for improving Romania's business environment. Law 99 has the potential to expand businesses' access to credit.
-  Law 99/1999 promotes business credit by strengthening the law by which movable property secures the payment of obligations. Title VI of the Law 99/1999 allows for the establishment of an Electronic Archive, through which secured transactions can be registered.
-  In many countries, creditors lend more money at lower interest rates when the borrower offers movable property as collateral. The Electronic Archive warns prospective creditors of prior interests in movable property. The Electronic Archive also establishes the date of priority for ranking competing claims to movable property.

PROBLEMS:

-  *The Electronic Archive is still not operational.* The Electronic Archive was officially opened on October 2 2000 but no operator has yet filed all the necessary paperwork to begin registering secured transactions.
-  *Proposed Electronic Archive operation practices violate privacy.* Romanian law restricts the information that the archive may collect from the borrower and the creditor. However, some people are insisting on reviewing contracts. This illegal review of contract violates the law and the business people's privacy.
-  *No mechanism for registering prior pledges.* Before the introduction of Law 99/1999, there were many pledges, financial leases and other transactions involving movables. These transactions are not treated equally. Now a mechanism needs to be created to transfer prior pledges from their paper file to the Electronic Archive in order for priority of pledges to be clearly determined by all parties.
-  *It is unclear whether the paper form used for data input or the computerized data itself will prevail in disputes.* Traditionally in Romania, the paper format is the one that rules in legal disputes. The advent of the Electronic Archive will require that legislation be revisited, with clear priority of paper or electronic format decided.

? *The fee for the operators' letter of guarantee is high.* For each 50 registrations, an Electronic Archive operator will need to pay 5000 euros into a guarantee fund. If an operator is making 50 registrations per day, this operator will need to pay 5000 euros on a daily basis in order to continue his activity. If payment is not received, the operator's access to the Electronic Archive will be blocked immediately. While there need to be controls on the system, this fee may be so high that it discourages operators from undertaking this important activity.

? *There has been little notice of the new system among the business community.* Without knowing that this new system for registering collateral exists, it is hard to see how it will gain widespread use throughout the country.

ACTIONS:

! *Potential operators-* please complete all necessary documents in order to be authorized and to start registering pledges in the Electronic Archive. Contact the Ministry of Justice for further details. Judge Manuela Gutu at the Ministry of Justice is in charge of the Electronic Archive. Set up training meetings around the country for your members so that they will be ready to start registering pledges as soon as authorization is received.

! *Creditors-* Be aware of the new system. Work to spread this information throughout your organization so that this important credit tool will be utilized. Discuss with Ministry of Justice any questions you may have about operations now so to ensure a speedy start up.

! *Business community members-* Open discussions with the Ministry of Justice to let them know about your need for expanded access to credit and specifically about your need. Set up meetings for your members throughout the country to let them know about these new developments in Romania's credit market. Locate your local operators and creditors and initiate discussions about how this system will work for you.

! *All interested parties-* please work to bring attention to this important development in the credit market of Romania. Operators, creditors and business members all stand to benefit from an efficient operating Electronic Archive. Discuss this development with others, with the political parties and with the media. Utilize the e-group Romania_credit@egroup.com (to subscribe to the group send an email to: Romania_credit-subscribe@egroups.com)

Law 99's Electronic Archive: Will It Promote Economic Growth?

By Allen Welsh
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New Opportunity for Economic Growth

Romanian businesses have a new opportunity to get the credit they need to succeed and to make Romania's economy grow. The new law on secured transactions (Law 99-1999, Art. 6) promotes business credit by strengthening the law by which movable property secures payment of obligations. Big or small, rich or poor, businesses will find it easier to purchase vehicles and equipment, stock their stores with goods, and get access to working capital by selling or pledging their business accounts. The law on secured transactions removes legal obstacles in order to promote wholesaling, retailing, importing, exporting, manufacturing, mining, farming, and building improvements.

Articles have already appeared in the press on how the new law works, and surely more will follow in the near future. This article focuses on one key feature of the new law: the electronic archive.

A Key to Success – the Electronic Archive

In many countries, creditors lend more money at lower interest rates when the borrower offers movable property as collateral. The decision to lend more money at a lower cost depends on several questions posed by the creditor. Our focus is on two of these questions. How does the creditor know that no other creditor has a claim to the collateral? How does the creditor know that a future creditor may not establish a superior claim to the collateral?

The secured transactions law answers these questions with the “electronic archive.” The electronic archive has two, and only two purposes:

- To warn prospective creditors of prior interests in movable property
- To establish the date of priority for ranking competing claims to movable property.

When a borrower and creditor agree that movable property will be used to secure payment of an obligation, the creditor files a simple notice in the archive. The notice identifies the borrower and the creditor, and contains a description of the collateral that may be general in nature. The information is stored in a computer. The information is public information. Anyone may see it.

When a borrower offers movable property as collateral, the creditor checks the electronic archive to see if the borrower's name appears. If yes, the creditor will determine if the collateral description includes the collateral now offered by the borrower. If the borrower is offering the same collateral twice, the creditor will refuse credit or require further assurances from the borrower. If the creditor does not find the borrower's name in the archive, or if the borrower's name is associated with

different collateral, the creditor may file a notice covering the collateral and be confident that its rights will be superior to the rights of others.

The notice is merely a notice, warning the prospective creditor that it should look further for information about the debtor. The notice gives no information about the agreement between the parties – the amount of credit, the value of collateral, the duration of the agreement, or other terms and conditions of the agreement. The privacy of contracts is preserved. The notice can easily be amended or terminated if circumstances change.

The electronic archive promotes commerce by giving creditors a fast, easy, and inexpensive way to learn whether other creditors have staked a claim to movable collateral. If there is more than one claim to the collateral, the first to file in the archive gets first access to the collateral. The archive gives the creditor a safe, simple, fast, and inexpensive way to assure that the creditor's claim to collateral is secure. With that confidence, the creditor's decision to give credit is much easier.

Archive Operations – the Experience of Other Countries

How well do movable property archives work in practice? Most practical experience comes from the United States. The laws of the fifty states established archives for notices of movable collateral in the mid-1960s. The archives exist in the state capitals and, for some types of collateral, in county offices. About 6,000 archives have operated in the U.S. for the past 35 years. That is 210,000 years of collective experience – a lot for a young country!

U.S. experience teaches us that sometimes the archives serve their purposes very well, and at other times they do not. Success depends on how the archive is implemented. American archive operators have made numerous experiments with alternative rules and procedures. Many have turned out to be mistakes that cause delay, expense, and uncertainty for creditors. Many mistakes have required legislatures to adopt regulations that strictly govern the behavior of archive operators. The most frequent problems in America arise when archive officials:

- Create forms asking for unnecessary information that is not required by the law
- Refuse action until unnecessary information is supplied
- Fail to collect information that the law requires and that creditors need
- Cause delay by reviewing documents for authenticity or correctness
- Impose excessive fees to raise revenue beyond the actual needs of the archive
- Devise complicated fee structures with no basis in the law and that discourage credit.

American archives have improved in recent years. The anti-commercial practices described above have largely been eliminated. Legislative changes have helped archive operators understand their proper role. Technological advances have lowered costs and improved service. Perhaps most importantly, archive operators have formed an association. They meet regularly to discuss issues and solve problems. Today, the American archives appear to serve business well.

Canadian provinces began adopting secured transactions laws more than ten years ago. Canadian drafters learned from American mistakes and improved the model. Some provinces operate in a 100% electronic environment – it is never necessary to prepare a paper form.

Poland designed a cumbersome archive. Judges approve applications to the registry. Hundreds of categories have been created to describe collateral, and judges approve the collateral description. A fee is based on the amount and types of collateral. Fees may reach hundreds of dollars, even for a small loan. This machinery is set up by regulations that go beyond anything contemplated in the law. Drafters of the law are disappointed. Businesses and creditors may be more disappointed than are the drafters.

Ukraine adopted a non-possessory pledge law in 1997. The law is narrower in scope than Romanian law (for example, it does not cover financial leases and conditional sales). But Ukraine built a high quality “state pledge registry,” operated within the Ministry of Justice on North American models. Notices contain minimal information. Registry officials work quickly and without interference in business affairs. The filing fee is about 6.00 USD and the charge to search registry records is about 3.00 USD. Registry officials around the country received extensive training prior to the opening of the registry. The training emphasized the purpose of notice filing – to serve business in a way that contributes to a successful economy.

The Challenge for Romania

Romania’s businesses deserve the best from their new law on secured transactions. The electronic archive can help deliver the promise of the new law. Regulations have been adopted that steer the electronic archive toward American and Canadian models that have proven to be successful for many years.

Romania adopted an unusual strategy for operating the electronic archives. Usually, the law designates a single state agency to collect forms, maintain computer data, and deliver information to creditors upon request. Perhaps Parliament feared that the usual model would result in yet another monstrous bureaucracy, charging high fees, imposing complicated procedures, delaying action, and dragging down the economic activity Romania needs to move forward. Instead, Parliament permitted multiple archive operators. The operators may be private organizations, associations, or other juridical entities. They will compete with each other to provide the best service to Romanian businesses, and have flexibility in setting competitive fees.

Initial operators of the Romanian archive have been identified (the National Office of the Trade Registry, the National Association of Public Notaries of Romania, and the National Institute for Research and Development in Informatics. More operators may be approved soon by the Ministry of Justice. The initial operators are working hard on final preparations for opening day: September 1, 2000.

Romanian businesses and the Romanian economy are counting on these organizations to meet the challenge: keep the electronic archive simple, fast, accurate and inexpensive.

PRESS RELEASE

THE NEW SECURED TRANSACTIONS LAW (LAW 99/1999) AND THE ELECTRONIC ARCHIVE

How can the electronic archive best promote the economic growth?

IRIS, the Center for Institutional Reform and the Informal Sector recently conducted workshops on the role and operation of the Romanian Electronic Archive as part of IRIS' USAID funded activities in Romania.

The subject of the workshops was the Secured Transactions Law, Law 99/1999 and the Electronic Archive. The law promotes credit by reforming the system using collateral for business relationships. The Electronic Archive warns creditors on other creditors' interests and insures priority. Potential archive operators, including the Public Notaries, Trade Registry, representatives and of the National Institute for Research and Development in Informatics, as well as business people, bankers and lawyers participated in these workshops.

IRIS Center held workshops in the following cities: Timisoara – September 11, Cluj– September 13, Brasov– September 15, Constanta– September 19, Bucharest– September 22, Iasi– September 26, and Suceava– September 28.

Three main issues exist with the planned operation of the Romania's Electronic Archive:

1. Electronic Archive still not operational

The secured transactions law, enacted in September 1999, called for the establishment of the Electronic Archive. One year passed and the archive is still not functioning. Businesses are missing an important credit opportunity. The Electronic Archive was officially opened on October 2nd, but no operator has yet filed the necessary paperwork to begin registering pledges.

2. Proposed Electronic Archive Operation Practices Violate Privacy

Romanian law restricts the information that the archive may collect from the borrower and the creditor. However, some people are insisting on reviewing contracts. This illegal review of contract violates the law and the business peoples' privacy.

3. No mechanism for registering prior pledges

Before the introduction of Law 99/1999, there were many pledges, financial leases and other transactions involving movables. These transactions are not treated equally. Now a mechanism needs to be created to transfer these prior pledges from their paper file to the electronic archive in order for priority of pledges to be clearly determined by all parties.

To continue lobbying efforts on all of these issues, IRIS has created an e-group for all parties interested in the electronic archive and the extension of moveable property as collateral based lending in Romania. To participate in this on-line discussion, please write to Romania_credit@egroups.com